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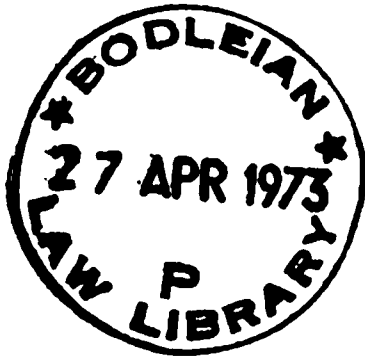
CRIMES AND PUNISHMENTS;
OR,
AN ANALYTICAL DIGEST
OF THE
CRIMINAL STATUTE LAW
OF IRELAND,
WITH AMPLE NOTES,
IN WHICH ARE DISCUSSED
THE POWERS AND AUTHORITIES OF THE SEVERAL COURTS
OF CRIMINAL JURISDICTION IN IRELAND,
THE DUTIES, RESPONSIBILITIES, AND PRIVILEGES
OF
MAGISTRATES, CORONERS, CONSTABLES,
AND OTHER OFFICERS,
IN BRINGING CRIMINALS TO JUSTICE,
AND, ALSO
THE PRACTICE OF THE COURTS, IN PUNISHING
OFFENCES, UPON INDICTMENT.

BY
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BARRISTER AT LAW.

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TO

THE RIGHT HONORABLE

CHARLES KENDAL BUSHE,

LORD CHIEF JUSTICE OF IRELAND,

AS A SMALL BUT CORDIAL TRIBUTE TO HIS GREAT LEARNING,

TALENTS, AND ELOQUENCE,

THE FOLLOWING COMPILATION IS MOST

RESPECTFULLY INSCRIBED.

INTRODUCTION.

THE following work was undertaken with a view to supply to the legal profession in Ireland, the criminal statute law of the country, in a portable and commodious form, and to illustrate the statutes by cases decided by the Judges; but, as the Compiler advanced, he found that by a little addition, his labor might also be made useful to the magistrates and coroners of the country, who, for many years at least, have been without any written guide on which they could rely, in the discharge of their important duties. It also occurred to him, that the treatises of Archbold and Roscoe, admirable as they are in execution, had nevertheless left untouched some subjects connected with the practice of the courts of criminal jurisdiction.

An attempt has, therefore, been made to give to the legal profession, a supplement to the various English treatises on the subject; and to the magistrates and other ministerial functionaries, plain and explicit instructions for the correct discharge of their duties.

The professional reader will be able at once to appreciate the design and the execution; but perhaps a few words are necessary, in order that the magistrates who may not have received a legal education

may be the better able to understand and apply the enactments and legal principles stated in the following pages.

It is recommended that he should carefully peruse the note on the different degrees of crime, which begins in p. 363, and particularly that part of it relating to felony and misdemeanor; and whenever he is called on to exert himself in bringing a party to justice, let him first endeavour to ascertain in what *grade* of crime, whether treason, felony, or misdemeanor, the offence with which the party stands charged is to be *classed*. This inquiry is the more important, as the powers and privileges both of magistrates and constables in each particular case will be found very much to vary accordingly. Thus, even a single magistrate *must* bail, in cases of *misdemeanor*, while in *felony* he *cannot*, but must either commit the party, or refer the question of bailment to two magistrates. So also, a constable having a warrant against a party charged with felony, may kill him, if he *flies* from arrest, and cannot otherwise be made amenable; but mere flight will not justify the constable in taking the life of a person charged with misdemeanor. Nothing less than actual *resistance*, combined with inevitable necessity, will excuse him.

It may also be remarked, that no crime amounts to *treason* except those which are made so by positive statute and are specified in the section on that head; it is believed, also, that every offence, which in law amounts to *felony*, has been made mention of in the following pages, as such. The remaining class of offences, however, comprises not only those hereafter particularised as *misdemeanors*, but also all such as are against the first principles of justice, and of dangerous consequence to the public; thus forgery,

generally or at common law, which is a misdemeanor, has not been particularly treated of; but forgery of a great number of instruments, as deeds, wills, bonds, &c., has been made felony by statute law, as may be seen by reference to the title, p. 48.

Those parts of the statutes which the Compiler found to have been repealed, are pointed out by *Italics*; but this is not meant to apply to those sections enclosed in brackets, where the *Italic* character is used to shew that the substance only, and not the words of the act, have been given.

E. H.

26 Gardiner's Place, 1st July, 1837.

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BOOK I. OF CRIMES.

PART I.

OFFENCES AGAINST INDIVIDUALS.

CHAPTER I.

OFFENCES AGAINST THE PROPERTY OF INDIVIDUALS.

SECT. I.

Simple Larceny.

9 Geo. 4, c. 55, (a) s. 1 ENACTS, that this present act, and the several matters therein contained, shall extend to Ireland, and not to England, Wales, or Scotland, except in the two cases therein-after specially provided for ; and that this act shall commence and take effect in Ireland, on the first day of September, 1828.

Act to extend to Ireland only, and shall commence on 1st Sept. 1828.

2. That the distinction between grand larceny and petty larceny shall be abolished, and every larceny (whatever be the value of the property stolen) shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as grand larceny was before the commencement of this act ; and every court whose power, as to the trial of larceny, was, before the commencement of this act, limited to petty larceny, shall have power to try every case of larceny, the punishment of which cannot exceed the punishment herein-after mentioned for simple larceny, and also to try all accessories to such larceny.

Distinction between grand and petty larceny abolished ; all larceny shall be considered as grand larceny.

3. That every person convicted of simple larceny, or of any felony hereby made punishable like simple larceny, shall (except in the cases herein-after otherwise provided for)

Punishments for simple larceny, or felony, pu-

(a) Entitled, " *An Act for consolidating and amending the laws in Ireland relative to larceny, and other offences connected therewith.*"

§ 4, c. 25.
punishable as
such.

For all of-
fences under
this act hard
labour or
solitary con-
finement may
be added to
imprison-
ment

Stealing pub-
lic or private
securities for
money or
warrants for
goods, &c.
felony,
punishable,
according to
the circum-
stances, as
stealing
goods.

Rule of inter-
pretation.

Stealing cer-
tain goods
in process of
manufacture,
punishable
as

be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment.

4. That in all cases, whenever any person shall be convicted of any felony, crime, misdemeanor, or indictable offence punishable under this act, for which imprisonment may be awarded, with or without any other punishment, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction; and it shall also be lawful for such court to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet.

5. That if any person shall steal any tally, order, Exchequer acquittance, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom, or of Great Britain, or of England, or of Scotland, or of Ireland, or of any foreign state, or in any fund of any body corporate lawfully acting as a company or society, or to any deposit in any savings' bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of money, whether of the United Kingdom, or of Great Britain, or of England, or of Scotland, or of Ireland, or of any foreign state, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony, of the same nature, and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or of like value with the money due on the security so stolen, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in the warrant or order: and each of the several documents hereinafter enumerated shall throughout this act be deemed for every purpose to be included under and denoted by the words "valuable security."

16. That if any person shall steal to the value of five shillings any linen, hempen, or cotton yarn, or any goods or article of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, shed, or other place, every such offender being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and, if a

male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment. 9 G. 4, c. 35.

22. That if any person shall, either during the life or after the death of any testator or testatrix, steal, or shall for any fraudulent purpose destroy or conceal, any will or codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or both, as the court shall award; and it shall not be necessary to allege in any indictment, or to prove on any trial for such offence, that such will or codicil, or other instrument, is the property of any person, or that the same is of any value, nor shall it be a subject of inquiry at such trial whether the same is or is not of any intrinsic value.

Stealing of wills, a misdemeanor, punishable by transportation, &c.

23. That if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or both, as the court shall award; and in any indictment for such offence, it shall be sufficient to allege the thing charged to have been stolen to be or to contain evidence of the title or of part of the title of the person, or of some one of the persons, having an interest, whether vested, contingent, legal, or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege or prove the thing charged to have been stolen to be of any value, nor shall it be inquired into at the trial what the value thereof is, or whether the same is or is not of any intrinsic value.

Stealing of writings relating to real estate.

24. Provided always, and be it enacted, that nothing in this act contained, relating to either of the misdemeanors last aforesaid, nor any proceeding, conviction, or judgment to be had or taken thereupon, shall prevent, lessen, or impeach any remedy, at law or in equity, which any party aggrieved by any such offence might or would have had if this act had not been passed; but nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against such offender. Provided also, that no person shall be liable to be convicted of either of the misdemeanors last aforesaid, in respect of any act done by him, by any evidence disclosed by him in consequence of any compulsory process of any court of law or equity, in any action, suit, or proceeding which shall have been bonâ fide instituted by any party aggrieved, or by

Provisions as to wills, &c. shall not lessen any other remedy.

Conviction shall not be evidence in actions against offender. Offender shall not be convicted by evidence disclosed by himself.

9 G. 4, c. 55.

punishment
as the steal-
ers.

Stealing ore,
&c. from
mines, felony,
punishable as
larceny.

Stealing
trees, shrubs,
&c. growing
in parks, gar-
dens, &c. ex-
ceeding the
value of 1*l.*,
or elsewhere
exceeding 5*l.*,
felony, pun-
ishable as
larceny.

Stealing trees,
&c. whereso-
ever growing,
of the value
of 1*s.* punish-
able on sum-
mary convic-
tion; for first
offence 5*l.*,
and second
offence im-
prisonment;
third offence,
felony, pun-
ishable as
larceny.

the same respectively to the owner thereof, and the person in whose possession or on whose premises the same shall be found (such person knowing that the dog, beast, or bird has been stolen, or that the skin is the skin of a stolen dog or beast, or that the plumage is the plumage of a stolen bird,) shall, on conviction before two justices of the peace, be liable for the first offence to such forfeiture, and, for every such subsequent offence, to such punishment, as persons convicted of stealing any dog, beast, or bird, are herein-before made liable to.

30. That if any person shall steal, or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese, or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny.

31. That if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage, with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house, every such offender, (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of one pound,) shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage, with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood respectively, growing elsewhere than in any of the situations herein-before mentioned, every such offender (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of five pounds) shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny.

32. That if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage, with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of one shilling at the least, every such offender, being convicted before two justices of the peace, shall, for the first offence, forfeit and pay the value of the article or articles stolen, or the amount of the injury done, and also such sum of money, not exceeding five pounds, as to the justices shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall, for such second offence, be committed to the common gaol or house of correction, there to be kept to hard labour, for such term, not exceeding twelve calendar

months, as the convicting justices shall think fit; and if any person so twice convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny.

9G. 4, c. 33.

33. That if any person shall steal, or shall cut, break, or throw down, with intent to steal, any part of any live or dead fence, or any wooden post, pale, or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively, every such offender, being convicted before two justices of the peace, shall, for the first offence, forfeit and pay the value of the article or articles so stolen, or the amount of the injury done, and also such sum of money, not exceeding five pounds, as to the justices shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justices shall think fit.

Stealing, &c.
any live or
dead fence,
wooden stile,
or gate, first
offence, 5*l.*;
second of-
fence, impris-
onment, &c.

34. That if the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile, or gate, or any part thereof, being of the value of two shillings at the least, shall, by virtue of a search warrant, to be granted as herein-after mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being earned before a justice or justices of the peace, shall not satisfy the justice or justices that he came lawfully by the same, he shall, on conviction by the justice or justices, forfeit and pay the value of the article or articles so found, and also any sum not exceeding two pounds.

Penalty on
suspected per-
sons in pos-
session of
wood, &c. 2*l.*

35. That if any person shall steal, or shall destroy or damage, with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory, every such offender, being convicted thereof before a justice or justices of the peace, shall, at the discretion of the justice or justices, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six calendar months, or else shall forfeit and pay the value of the article or articles so stolen, or the amount of the injury done, and also such sum of money, not exceeding twenty pounds, as to the justice or justices shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny.

Stealing, &c.
fruit or vege-
tables, in a
garden, &c.
punishable on
summary con-
viction; for
first offence
by imprison-
ment or fine
of 20*l.*; se-
cond offence,
felony,
punishable as
larceny.

36. That if any person shall steal, or shall destroy or damage, with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing,

Stealing, &c.
vegetable pro-
ductions, not
growing in

9 G. 4, c. 55.

gardens, &c. ;
first offence,
&c. imprison-
ment or fine
of 20s. ; se-
cond offence,
&c. imprison-
ment, &c.

Stealing glass
or wood work,
or fixtures of
any kind,
from build-
ings, and me-
tal fixtures
from grounds,
felony, pu-
nishable as
larceny.

Tenants and
lodgers steal-
ing any pro-
perty from
houses or
apartments
let to them,
felony, pu-
nishable as
larceny.

Form of in-
dictment.

or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, or nursery ground, every such offender, being convicted before two justices of the peace, shall, at the discretion of the justices, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one calendar month, or else shall forfeit and pay the value of the article or articles so stolen; or the amount of the injury done, and also such sum of money, not exceeding twenty shillings, as to the justices shall seem meet; and in default of payment thereof, together with the costs (if ordered,) shall be committed as aforesaid, for any term not exceeding one calendar month, unless payment be sooner made; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding six calendar months, as the convicting justices shall think fit.

37. That if any person shall steal, or rip, cut, or break, with intent to steal, any glass or wood work belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or for a fence to any dwelling house, garden, or area, or in any square, street, or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person: provided always, that nothing herein contained shall be construed to affect any enactment or law for the punishment of persons guilty of stealing any such property belonging to or vested in any commissioners or other persons, under any act for paving, cleansing, lighting, or improving any city, town, or place in Ireland.

38. And for the punishment of depredations committed by tenants and lodgers, be it enacted, that if any person shall steal any chattel or fixture let to be used by him or her, in or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and it shall be lawful, in every such case of stealing any chattel, to prefer an indictment in the common form, as for larceny, and in every such case of stealing any fixture, to prefer an indictment in the same form as if the offender were not a tenant or lodger,

and in either case to lay the property in the owner, or the person letting to hire. 9 G. 4, c. 55.

39. And for the punishment of depredations not punishable capitally, committed by clerks and servants, and such other persons as herein-after mentioned, be it enacted, that if any clerk or servant shall steal any chattel, money, or valuable security, belonging to, or in the possession or power of his master or employer, every such offender, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned for any time not exceeding three years, and if a male to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment.

Clerks and servants (not punishable capitally) stealing property of their masters, transportation or imprisonment.

50. And to encourage the prosecution of offenders, be it enacted, that if any person guilty of any such felony or misdemeanor as aforesaid, in stealing, taking, obtaining, or converting, or in knowingly receiving, any chattel, money, valuable security, or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative ; and the court, before whom any such person shall be so convicted, shall have power to award, from time to time, writs of restitution for the same property, or to order the restitution thereof in a summary manner : provided always, that if it shall appear, before any award or order made, that any valuable security shall have been bona fide paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, shall have been bona fide taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, or converted, as aforesaid, in such case the court shall not award or order the restitution of such security.

The owner of stolen property, prosecuting thief or receiver to conviction, shall have restitution of his property.

Exception as to bona fide payment or transfer of valuable securities.

51. That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable ; and every accessory after the fact to any felony punishable under this act, (except only a receiver of stolen property,) shall, on conviction, be liable to be imprisoned for any term not exceeding two years ; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender.

Accessories before the fact, &c. in felonies.

Accessories after the fact.

Abettors in misdemeanors.

55. That if any person shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on summary conviction, either for everytime of its commission, marily shall

Abettors in offences punishable summarily shall

9 G. 4, c. 55.

he punishable
as principals.

Persons in
the act of
committing
offences may
be apprehended without a warrant.

A justice
upon good
grounds of
suspicion
proved on
oath, may
grant a
search warrant.

Any person
to whom stolen property
is offered, to
seize the
party.

Limitation as
to summary
proceedings.

Competent
witnesses.

Mode of compelling the
appearance of
persons punishable on
summary conviction.

or for the first and second time only, or for the first time only, every such person shall, on conviction before a justice or justices of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, as a principal offender, is by this act made liable.

56. And for the more effectual apprehension and discovery of all offenders punishable under this act, be it enacted, that any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of this act, may be immediately apprehended without a warrant, by any peace officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of or any person authorized by such owner, and such offender shall and may be forthwith taken before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath, before a justice of the peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any such offence shall have been committed, is in any dwelling-house, outhouse, garden, yard, croft, or other place or places, the justice may grant a warrant to search such dwelling-house, outhouse, garden, yard, croft, or other place or places for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power, is required to apprehend, and forthwith to carry before a justice of the peace, the party offering the same, together with such property, to be dealt with according to law.

57. That the prosecution for every offence punishable on summary conviction under this act shall be commenced within three calendar months after the commission of the offence, and not otherwise, and the evidence of the party aggrieved shall be admitted in proof of the offence.

58. [and c. 56, s. 37.]—And for the more effectual prosecution of all offences punishable on summary conviction under [these acts] be it enacted, that where any person shall be charged, on the oath of a credible witness, before any justice of the peace, with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then, upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode, the justice may either proceed to hear and determine the case *ex parte*, or may issue his warrant for apprehending such person, and bringing such person before such justice, or some other justice or justices of the peace; or it shall be lawful for the justice, before whom the charge shall be made,

any property stolen or taken, or for or as the amount of summary
ry done, (such value or amount to be assessed in each convictions.
the convicting justice or justices,) shall be paid to the
grieved, if known, except where such party shall have
mined in proof of the offence, and in that case, or where
aggrieved is unknown, such sum shall be applied in
manner as a penalty; and every sum which shall be
as a penalty by any justice or justices of the peace,
in addition to such value or amount as aforesaid,
rise, shall be paid, under the order of such justice or
to the treasurer or other proper officer of the infirmity
nty, city, town, or place wherein such conviction shall
ce, for the use of such infirmity, in case there shall be
infirmity established within or for such county, city,
place, and in case there shall not be any such infir-
m to the treasurer or other proper officer of such other
arity within such county, city, town, or place, as such
justices shall by his or their order for that purpose di-
vided always, that where several persons shall join in
violation of the same offence, and shall upon conviction
be adjudged to forfeit a sum equivalent to the value
property, or to the amount of the injury done, in every
no further sum shall be paid to the party aggrieved
which shall be forfeited by one of such offenders only,
corresponding sum or sums forfeited by the other of-
fenders, shall be applied in the same manner as any
imposed by a justice of the peace, is herein-before di-
be applied.

that in every case of a summary conviction under this If a person
e the sum which shall be forfeited for the value of the summarily
stolen or taken or for the amount of the injury done convicted
shall not pay

9 G. 4, c. 55.

Scale of imprisonment.

Justice may discharge certain offenders on payment of recompence.

Pardon for non-payment of money.

Summary conviction shall be a bar to any other proceeding for the same cause.

Convictions to be drawn in the following form.

Form of conviction.

there to be imprisoned only, or to be imprisoned at hard labour, according to the discretion of the justice or justices, for any term not exceeding two calendar months, or the amount of the sum forfeited, or of the penalty imposed both, (as the case may be,) together with the costs exceed five pounds, and for any term not exceeding six calendar months, where the amount of such forfeiture or both, as the case may be, together with costs, shall not exceed ten pounds, and for any term exceeding six calendar months in any other case, the amount to be determinable in each of the cases aforesaid of the amount and costs.

65 [and c. 56, s. 45.]—Provided always, and be it enacted that where any person shall be summarily convicted by a justice or justices of the peace, of any offence against [these acts], and it shall be a first conviction, it shall be lawful for the justice or justices, if he or they shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either as shall be ascertained by such justice or justices.

66. [and c. 56, s. 46.]—That it shall be lawful for the lieutenant or other chief governor or governors of Ireland *time being* (a) to extend the royal mercy to any person convicted by virtue of [these acts], although he shall be imprisoned for non-payment of money, to some party other than the crown.

67. [and c. 56, s. 47.]—That in case any person convicted of any offence punishable upon summary conviction by [these acts], shall have paid the sum adjudged to be paid with costs, if awarded under such conviction, or shall have received a remission thereof from the crown, or shall have obtained the imprisonment awarded for non-payment thereof, or shall have been discharged from his conviction in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in such case he shall be released from all further or other proceedings for the same cause.

68. [and c. 56, s. 48.]—That the justice or justices before whom any person shall be convicted of any offence, against [these acts], may cause the conviction to be drawn up in the form of words, or in any other form of words to the effect as the case shall require; *videlicet*,

‘ Be it remembered, that on the day of in the year of our Lord at in the county of town, or place, *as the case may be*], *A. O.* is convicted before us of his majesty’s justices [or before us *J. P.* and *S. L.* justices] for the said county [or city, &c], for that he the said *A. O.* did commit the offence, and the time and place when and where the same was committed, *as the case may be*; and, on a second conviction, state the first conviction; and I the said *J. P.* [or we the said *J. P.* and *S. L.*,] do

(a) These words are omitted in c. 56, s. 46

'and A. O., for his said offence, to be imprisoned in the [or to be imprisoned in the] and there kept to hard labour] for the space of [or to forfeit and pay , here state the penalty actually imposed, or state the penalty, and also the value of the articles stolen, embezzled, or taken, or the amount of the injury done, as the case may be,] and [in any case where the costs shall be awarded] also to pay the sum of for costs, and in default of immediate payment of the [or to be imprisoned in the] [or to be imprisoned in the] and there kept to hard labour,] for the space of unless the said sum [or sums] shall be sooner paid ; [or, and I [or we] order that the said sum [or sums] shall be paid by the said A. O., on or before the day of and I [or we] direct that the said sum of [i. e. the penalty only] shall be paid to in the county, [or city, town, or place, as the case may be] to be by him [or them] applied according to the directions of the statute in that case made and provided [or that the said sum of [i. e. the penalty only] shall be paid to, &c., as before] and that the said sum of [i. e. the value of the articles stolen, or the amount of the injury done] shall be paid to C. D. [the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty, as before ;] and [if not justice or justices shall think proper to award the complainant his costs,] I [or we] order that the said sum of for costs shall be paid to [the complainant.] Given under my hand and seal [or our hands and seals,] the day and year first above mentioned.'

9 G 4, c. 55.

69. [and c. 56, s. 49.]—That in all cases where by this act two or more justices of the peace are authorized and required to hear and determine any complaint, one justice shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more justices of the peace ; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon, by any two such justices, being made, all and every the subsequent proceedings to enforce obedience thereto, or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing relating to the offence, may be enforced by either of the said justices, or by any other justice of the peace for the same county, city, town, or place, in such and the like manner as if done by the same two justices, who so heard and adjudged the said complaint ; and where the original complaint or information shall be made to any justice or justices of the peace, different from the justice or justices before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact.

One justice may receive original information, &c. where two or more justices are empowered to hear and determine.

70. [and c. 56, s. 50.]—That in all cases where the sum adjudged to be paid on any (a) summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction, may appeal to the next court of general or quarter sessions (which shall be holden not less than twelve days after the day of such conviction) for the county, city, town (a) or place wherein the cause of complaint shall have arisen : provided that such person shall give to the complainant a notice in writing of

Appeal on conviction to general or quarter sessions.

9 G. 4, c. 55.

such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such general or quarter sessions, and shall also either remain in custody until the sessions, or shall (a) enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, the court shall order and adjudge the offender to be punished according to the conviction, and to pay such costs, if any, as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

No conviction, nor adjudication made on appeal, shall be quashed for want of form.

71. [and c. 56, s. 51.]—That no such conviction, nor any adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari, or otherwise, into any of his majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Convictions to be returned to the sessions.

72. [and c. 56, s. 52.]—That every justice of the peace, before whom any person shall be convicted of any offence against this act, shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary be shown.

How far evidence in future cases.

Admiralty offences.

74. [and c. 56, s. 55.]—That where any felony or misdemeanor, punishable under this act, shall be committed within the jurisdiction of the admiralty of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony or misdemeanor committed within that jurisdiction.

Act not to extend to England, Wales, or Scotland, except where

75. Provided always, and be it enacted, that nothing in this act contained shall extend to England, Wales, or Scotland, except as follows; (that is to say,) that if any person having stolen, or otherwise unlawfully taken any chattel, money, va-

(a) These words are omitted in c. 55, s. 70.

valuable security, or other property whatsoever, the stealing or unlawfully taking whereof is made punishable by indictment, by any of the provisions of this act, in any one part of the United Kingdom, shall afterwards have the same property in his possession in any other part of the United Kingdom, he may be dealt with, indicted, tried and punished for such offence, under this act, in that part of the United Kingdom where he shall so have such property, in the same manner as if he had actually stolen or unlawfully taken it as aforesaid, in that part of the United Kingdom; and if any person in any one part of the United Kingdom shall receive, or shall have any chattel, money, valuable security, or other property whatsoever, which shall have been stolen, or otherwise unlawfully taken as aforesaid, in any other part of the United Kingdom, such person, knowing the said property to have been stolen, or otherwise unlawfully taken, as aforesaid, he may be dealt with, indicted, tried, and punished for such offence in that part of the United Kingdom where he shall so receive or have the said property, in the same manner as if it had been originally stolen or unlawfully taken, as aforesaid, in that part of the United Kingdom. (a)

9 G. 4, c. 55.

offenders having stolen or received goods in one part of the United Kingdom shall have them in another.

5 & 6 Will. 4, c. 34, s. 2. [*Recites the first enactment in 9 Geo. 4, c. 55, s. 50, and the omission of the word "such" between "any" and "offence."*] Be it enacted that the hereinbefore recited clause of the said act of parliament shall be deemed, construed, and taken to have such and the same effect to all intents and purposes whatsoever, as if the said word "such" had been originally inserted between the said words "any" and "offence."

Omission of the word "such" in 9 G. 4, c. 55, s. 50, supplied.

(a) "The finding of stolen property on the prisoner, recently after the taking, is evidence of the larceny having been committed by him; as it is of burglary, if the goods had been burglariously taken, and sufficient to call on him to account for his possession. Yet, in the case of a bank note, such finding, if evidence at all, is too slight to found a verdict; for the note passes easily and quickly from hand to hand, without examination; and people are not to be expected to mark each note, or to be able to show from whom it has been received. If indeed the note were of large amount, it might be otherwise." [In this case it was only for one pound.] *Per Burton, J.; Rex v. Atkinson, Armagh Spr. Ass. 1825.*

Finding of stolen property in prisoner's possession, evidence against him.

Rex v. —. The prisoner found a check on the bank in the street, which he afterwards applied to his own use, without making any inquiries concerning it. Being convicted of felony, the case was reserved for the consideration of the twelve judges, who upheld the conviction, and took the distinction to be;—that when a person finding an article, immediately resolves to convert it to his own use, and does so, without making any effort to discover the true owner, that is felony. But it would be otherwise, if the intention to convert had not arisen until after the finding, when it would only have amounted to a breach of trust. *Cited by Greene, Recorder of Dublin, in Rex v. M'Gowan, June, 1824.*

The finding of a chattel, and immediately converting it to his own use, without making inquiry as to the owner, is evidence of a felonious taking.

Accordingly, where the prisoner, a young girl, found in the

SECTION 3.

Piracy and other Offences connected with Shipping

11, 12, & 13 Jac. 1, c. 2, (a) s. 1.—Whereas traytors, pirates, thieves, robbers, murderers, and confederators upon the sea, many times escape unpunished because the trial of their offences hath heretofore been ordered, judged, and determined before the admiral, or his lieutenant, or commissarie, after the course of the civill lawes; the nature whereof is, that before any judgment of death can be given against the offenders, either they must plainly confesse their offences, which they will never doe without torture or paines, or else their offences be plainly and directly proved by witnesses indifferent, such as saw their offences committed, which can seldome be gotten but by chance, because such offendours commit their offences upon the sea, and many times murder and kill such persons being in the shippe or boate where they commit their offences, which should witness against them in that behalf; and also such as should beare witness be commonly marriners and shipmen, which, because of their often voyages and passages on the seas, are uncertain to be found when their testimonies should be had and used in such cases; for reformation whereof, be it, &c. that all treasons, felonies, robberies, murders, and confederacies, hereafter to be committed in or upon the sea, or in any other haven, river, creek, or place, where the admiral or admirals have, or pretend to have power, authority, or jurisdiction, shall be inquired, tryed, heard, determined, and judged in such shires and places in this realm, as shall be limited by the king's commission or commissions, to be directed for the same, in like forme and condition, as if any such offence or offences had been committed or done in or upon the land; and such commissions shall be had under the king's great seal of this realm, directed to the admiral

Treasons, felonies, &c. committed on sea, shall be tried under an admiralty commission, as if committed on land.

improper, and accordingly recommended that they should have a free pardon.

Rex v. Stapleton and Wife, Carlow Sum. Ass. 1828. The prisoners were indicted for robbery, in which the wife appeared to have taken an active part. BUSHE, C. J. left the question of coercion to the jury, who found both prisoners guilty. The point was reserved for the consideration of the judges, who held, that the presence of the husband afforded only presumptive evidence of coercion of the wife, which was capable of being repelled by other evidence. Some of the judges doubted whether this privilege of a *femme covert* existed in any case attended with violence to the person. The conviction was sustained.

(a) Entitled “An act for punishing of pirats and robbers on the sea.”

A *femme covert* may be convicted of a robbery committed in the presence of her husband, if it appear that she acted without coercion.

or admirals, or to his or their lieutenant-general, deputie or deputies, and to three or four such other substantiall persons as shall be nominated or appointed by the lord chancellor of Ireland, for the time being, from time to time and as often as need shall require, to heare and determine such offences after the course of the common laws of this realm, used for treasons, felonies, robberies, murders, and confederacies done and committed upon the land within this realm.

2. That such persons to whom such commission or commissions shall be directed, or four of them at the least, shall have full power and authority to inquire of such offences, and of any of them, by the oathes of twelve good and lawful inhabitants in the shire, limited by their commission, in such like manner and forme as if such offences had been committed upon the land within the same shire: and that every indictment found and presented before such commissioners, of any treason, felonies, robberies, murders, manslaughter, or such other offences committed or done, in or upon the seas, or in or upon any haven, river, or creek, as aforesaid, shall be good and effectual in the law: and if any person or persons happen to be indicted for any such offence done, or hereafter to be done upon the seas, or in any other places above limited, that then such order, process, judgment, and execution shall be used, had, or done, and made to and against every such person and persons so being indicted, as against traitors, felons, and murderers, for treason, felonie, robberie, murder, or other such offences done upon the land, as by the lawes of the realm is accustomed, and that the triall of such offence or offences, if it be denied by the offendour or offendours, shall be had by twelve lawfull men inhabiting in the shire limited with such commission, which shall be directed as aforesaid, and no challenge or challenges to be had for the hundred; and such as shall be convict of any such offence or offences by verdict, confession, or process, by authority of any such commission, shall have and suffer such pains of death, losses of lands, goods, and chattles, as if they had been attainted and convicted of any treason, felonies, robberies, or other the said offences done upon the land.

3. That for treasons, robberies, felonies, murders, and confederacies, done upon the sea or seas, or in any place above rehearsed, the offenders shall not be admitted to have the benefit of his or their clergie, but be utterly excluded thereof and from the same, and also of and from the privilege of any sanctuary.

4. Provided alway, that this act extend not to be prejudiciall or hurtfull to any person or persons for the taking any victuals, cables, ropes, anchors or sails, which any such person or persons, compelled by necessity, shall take of or in any shippe, which may conveniently spare the same; so as the same person or persons pay out of hand for the same victualls, cables, ropes, anchors, or sayles, money or money-worth, to the value of the

11, 12, & 13,
J. 1, c. 2.

The trial shall be by twelve men of the shire limited in the commission.

Benefit of clergy excluded.

Not to prejudice persons taking victuals, &c. when in distress, if they pay the value.

11, 12, & 13,
J. 1, c. 2.



Stealing goods
from a vessel
in a port, ri-
ver, or canal,
&c. or from
wharfs, trans-
portation, &c.

Plundering
any part of
the tackle or
cargo of a
shipwrecked
vessel, felony,
death.

Persons in
possession of
shipwrecked
goods, not
giving a satis-
factory ac-
count, shall
pay a penalty
not exceeding
50*l*.

Shipwrecked
goods offered
for sale may
be seized, and

thing so taken, or doe deliver for the same a sufficient bill obligatorie to be payed in forme following, that is to say; if the taking of the same things be on this side of the streights of Morocco, then to be paid within foure moneths; and if it be beyond the streights of Morocco, then to be payed within twelve moneths next ensuing the making of such bills; and that the makers of such bills well and truly pay the same debt at the day to be limited within the said bills; anything in this present act to be contrarie notwithstanding.

9 *Geo. 4, c. 55, s. 17.*—That if any person shall steal any goods or merchandize in any vessel, barge, or boat of any description whatever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin, belonging to or communicating with any such port, river, or canal, or shall steal any goods or merchandize from any dock, wharf, or quay, adjacent to any such port, river, canal, creek, or basin, every such offender, being convicted thereof, shall be liable at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment.

18. That if any person shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind, belonging to such ship or vessel, every such offender, being convicted thereof, shall suffer death as a felon; provided always, that when articles of small value shall be stranded or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence, it shall be lawful to prosecute and punish such offender as for simple larceny; and in either case, the offender may be indicted and tried either in the county in which, or in any county next adjoining the place in which the offence shall have been committed.

19. That if any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore as aforesaid, shall, by virtue of a search warrant, to be granted as herein-after mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender, on conviction of such offence before any two justices of the peace, shall forfeit and pay such sum of money, not exceeding fifty pounds, as to such justices shall seem meet.

20. That if any person shall offer or expose for sale any goods, merchandize, or articles whatsoever, which shall have been unlawfully taken, or reasonably suspected to have been taken from

any ship or vessel in distress, or wrecked, stranded, or cast on shore, as aforesaid; in every such case, any person to whom the same shall be offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall, with all convenient speed, carry the same, or give notice of such seizure, to some justice of the peace; and if the person who shall have offered or exposed the same for sale, being duly summoned by such justice, shall not appear and satisfy the justice that he came lawfully by such goods, merchandize, or articles, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward, to be ascertained by the justice, to the person who seized the same; and the person having offered such goods, merchandize, or articles for sale, shall, on conviction of such offence before any two justices of the peace, forfeit and pay the amount of such reward so ordered, and also such sum of money, not exceeding thirty pounds, as to two such justices shall seem meet.

9 G. 4, c. 55.

ordered by a justice to be restored to the owner, paying salvage.

Penalty on person offering goods for sale.

11 Geo. 2, c. 9, s. 2.—And, for the effectual preventing the wilful casting away, burning, or otherwise destroying of ships, by the owners, masters, and mariners thereof and thereto belonging; be it, &c., that if any owner of, or captain, master, or mariner, or other officer belonging to any ship, shall, after the twenty-fifth day of March, (1738,) wilfully cast away, sink, burn, or otherwise destroy the ship, of which he is owner, or unto which he belongeth, or in any manner otherwise direct, or procure the same to be done, to the prejudice of any person or persons, bodies politic or corporate, that shall underwrite or execute any policy or policies of insurance thereon, or of any merchant, or merchants, that shall load goods thereon; and shall be lawfully convicted thereof, such person or persons so offending shall be adjudged guilty of felony, and shall suffer death without the benefit of clergy, or of the statute made in the ninth year of the reign of her late majesty queen Anne, intituled, “An act for taking away the benefit of clergy in certain cases; and for taking away the book in all cases; and for repealing part of the statute for transporting felons.”

Mariner destroying a ship, felony, without clergy.

23 & 24 Geo. 3, c. 48, s. 16.—That if any person or persons, under colour or claiming salvage, or under any other pretence, shall, contrary to the true intent and meaning of this act, (a)

Detaining a ship after salvage satisfied, felony.

(a) In order to avoid the delays experienced under the 4 Geo. 1, c. 4, in the ascertainment of the amount of salvage payable by vessels stranded, &c., it is enacted, (s. 12,) that all persons claiming rewards for salvage, shall, within fourteen days after service performed, make and file their claims in writing, signed with their names, at the next excise office, stating the items of service performed, and the sums demanded in respect of each, and verified by oath if required. Upon payment of such claims, (s. 13,) the

23 & 24 G. 3,
c. 48.

take or detain the possession of the ship or vessel, goods or effects aforesaid, or any of them, from the owners or other person, or persons interested therein, or lawfully authorized to receive such possession thereof, after the said owners, or the said other person or persons shall, in any of the respective cases herein-before mentioned, by complying with the terms of this act, have intitled him or themselves to such possession of the said ship or vessel, goods or effects, every such person so offending, being thereof indicted, and lawfully convicted, shall for the said offence be adjudged a felon, and suffer the pains and penalties inflicted on persons convicted of felony.

Setting fire to
or destroying
a ship, felony,
with death.

9 Geo. 4, c. 56, s. 9.—That if any person shall unlawfully and maliciously set fire to, or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

Damaging a
ship, other-
wise than by
fire, felony,
punishable by
transporta-
tion.

10. That if any person shall unlawfully and maliciously damage, otherwise than by fire, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same, or to render the same useless, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment.

Exhibiting
false signals,
destroying a
shipwrecked
vessel or car-
go, &c., or
forcibly im-
peding men
from saving
their lives,
felony, with
death.

11. That if any person shall exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress, or shall destroy any part of any ship or vessel which shall be in distress or wrecked, stranded, or cast on shore, or shall destroy any goods, merchandise, or articles of any kind belonging to such ship or vessel, or shall by force prevent or impede any person endeavouring to save his life from such ship or vessel, (whether he shall be on board or shall have quitted the same,) every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

vessel shall be delivered to the owner, &c., without further charge. If the claims be disputed, they are to be adjusted (s. 14) by two justices of the peace, and, upon payment of the sum adjudged by them, the vessel shall be delivered without further cost; or (s. 15) it may be delivered before the adjudication, provided the owner, &c. deposit the amount claimed, or give security by bond to the officer of the customs, with two sufficient sureties, in double the amount claimed, to abide the decision of the justices.

*series, p. 9. Apprehension of offenders, post, p. . Ad-
ffences, p. 14. Malicious intent, post, p. . Pardon,
Removing stolen goods to another part of the United King-
4. Restitution, p. 9. Summary proceedings, p. 10.]*

SECTION 4.

Receiving Stolen Goods.

4, c. 55, s. 47. And with regard to receivers of stolen
be it enacted, that if any person shall receive any chat-
ey, valuable security, or other property whatsoever, the
or taking whereof shall amount to a felony, either at
law or by virtue of this act, such person knowing the
have been feloniously stolen or taken, every such re-
all be guilty of felony, and may be indicted and con-
ither as an accessory after the fact, or for a substantive
and in the latter case, whether the principal felon shall
not have been previously convicted, or shall or shall
menable to justice ; and every such receiver, howsoever
d, shall be liable, at the discretion of the court, to be
ted beyond the seas for any term not exceeding fourteen
or less than seven years, or to be imprisoned for any term
eeding three years, and if a male, to be once, twice, or
ublicly or privately whipped, (if the court shall so think
ddition to such imprisonment : provided always, that no
howsoever tried for receiving as aforesaid, shall be liable
osecuted a second time for the same offence.

That if any person shall receive any chattel, money, valu-
curity, or other property whatsoever, the stealing, taking,
ig, or converting whereof is made an indictable misde-
by this act, such person knowing the same to have been
ilfully stolen, taken, obtained, or converted, every such re-
shall be guilty of a misdemeanor, and may be indicted
ivicted thereof, whether the person guilty of the principal
eanor shall or shall not have been previously convicted
or shall or shall not be amenable to justice ; and every
ceiver shall, on conviction, be liable, at the discretion of
rt, to be transported beyond the seas for the term of seven
or to be imprisoned for any term not exceeding two years,
male, to be once, twice, or thrice publicly or privately
d (if the court shall so think fit,) in addition to such im-
ment.

That if any person shall receive any chattel, money, valu-
curity, or other property whatsoever, knowing the same to
een feloniously or unlawfully stolen, taken, obtained, or
ed, every such person, whether charged as an accessory
e fact to the felony, or with a substantive felony, or with

Where the
original of
fence is fe-
lony, the re-
ceiver of
stolen proper-
ty may be
tried, either
as an acces-
sory after the
fact, or for a
substantive
felony, and
punished by
transporta-
tion, &c.

Where the
original of-
fence of steal-
ing, or con-
verting pro-
perty, is a
misdemeanor,
receiver may
be prosecuted
for a misde-
meanor, whe-
ther principal
be convicted
or not.

Receiver may
be tried where
the principal
is triable, or
where the
property is
found in his

a misdemeanor only, may be dealt with, indicted, tried, and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the county or place where he actually received such property.

53. That where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice or justices of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property, is by this act made liable.

28 Geo. 3, c. 49, s. 7.—And whereas the altering or defacing the names, cyphers, crests, or arms, engraved upon plate or watches, after the same have been unlawfully or feloniously taken from the right owners thereof, in many instances prevents the discovery and detection of thefts and robberies, and of other offences; be it, &c., that no person whomsoever shall, upon any pretence, change, alter, or deface the name engraved upon any watch, as the maker or owner thereof, or the number of such watch, or the place where made, or any coat of arms, or crest thereon, or on any part or case thereof; nor shall any person change, alter, or deface the name, cypher, crest, or arms engraved upon any article, or piece of family plate, whether gold or silver, without the consent of the owner thereof in writing, or of some person duly authorized to sell the same, or give such consent, unless such articles as aforesaid shall before that time be fairly and openly sold by a reputable auctioneer at a public auction duly advertised; and in case any person shall so alter, change, or deface the name engraved on any watch, as the maker or owner thereof, or the number of such watch, or place where made, or shall alter, change, or deface the name, cypher, crest, or arms on the same, or any part or case thereof, or on any article, or piece of family plate, whether the same be of gold or silver, or shall employ any person so to do, or be in anywise assisting in the doing the same, or in causing or procuring the same to be done, every such person, not being authorized, or not having bought said articles at public auction, as aforesaid, shall be indictable, triable, and punishable in like manner as receivers of stolen goods, knowing the same to be stolen, are by law indictable, triable, and punishable. (4)

(4) The repealed statute, 23 & 24 Geo. 3. c. 45, s. 2, made it a misdemeanor to "buy or receive any goods or chattels, know-

Drabby offences, p. 14. *Pardon*, p. 12. *Removing goods in parts of the United Kingdom*, p. 14. *Restitution*, p. 10. *Proceedings*, p. 10.]

SECTION 5.

Embezzlement.

22 Geo. 3, c. 16, (a) s. 16. That if any officer or servant of the said company, being intrusted with any note, bill, or warrant, bond, deed, or any security, money, or other thing belonging to the said governor and company, or having in his possession, dividend warrant, bond, deed, or any security or effects of other person or persons lodged or deposited with the said company, or with him as an officer or servant of the said company, shall secretly, embezzle, or run away with any such note, dividend warrant, bond, deed, security, money, or effects, or part of them; every officer or servant so offending, and hereof convicted in due form of law, shall be deemed to be guilty of felony, and shall suffer death as a felon without benefit of clergy.

Officers of the Bank of Ireland embezzling bank notes, &c., felony.

same to have been stolen." Held by the judges of Ireland that a prisoner was properly convicted under this act of receiving Bank of Ireland notes. *C. C. R. June, 1809, v. Mayne, J.*

are "goods" within the statute 23 & 24 G. 3, c. 46, s. 2.

so, promissory notes are "goods" within that statute. By seven judges to two. *C. C. R. Tr. 1810, ex MSS. J.*

So also are promissory notes.

v. —. The prisoner was indicted at the Spring Assizes at Derry for feloniously receiving and having a pig, known to have been stolen. The evidence was, that the pig had been stolen in the county of Donegal, was there by the prisoner, who killed it in that county, and brought the carcass into the county of Derry. *Sproule*, for the prisoner, insisted that the indictment was not sustained by the evidence, and *ex v. Halloway*, 1 Carr. & P. 128. Although that case was overruled by the subsequent one of *Rex v. Pickering*, 1 Moo. C. C. R., 242, both may be distinguished from the present, since the animals there charged to have been stolen and killed were called by the same name, alive and dead; but the present was not a pig, but a carcass of pork, which the prisoner had in his possession in Derry. The jury found him guilty, but the judge, J. reserved the point for the consideration of the court, who held that the conviction was proper.

The charge of feloniously receiving and having a pig in the county of A. is supported by evidence of a pig stolen and killed in the county of B. and the carcass carried into the county of A.

Entitled "An act for establishing a bank by the name of the Governor and Company of the Bank of Ireland."

9 G. 4, c. 55.

Clerks or servants receiving any money, &c., on their master's account, and embezzling it, shall be deemed to have stolen it feloniously, although never in the master's possession.

Distinct acts of embezzlement may be charged in the same indictment.

Allegation and proof of the property embezzled.

Agents embezzling money entrusted to them, and directed to be applied to any special purposes, misdemeanor, punishable by transportation, &c.

9 Geo. 4, c. 55, s. 40. And for the punishment of embezzlement committed by clerks and servants, be it enacted, that if any clerk or servant, or any person employed for the purpose of in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money or valuable security, for or in the name or on the account of his master or employer, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer, otherwise than by the actual possession of his clerk, servant, or other person so employed; and every such offender being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned for any term not exceeding three years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

41. And for preventing the difficulties which have been experienced in the prosecution of such offenders, be it enacted that it shall be lawful to charge in the indictment, and to proceed against the offender, for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master or employer, within the space of six calendar months from the first to the last of such acts; and in every such indictment, where the offence shall relate to any money, or any valuable security, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security, and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled to any amount although the particular species of coin or valuable security of which such amount was composed shall not be proved, or if he shall be proved to have embezzled any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof shall be returned to the party delivering the same, and although such part shall have been returned accordingly.

42. And for the punishment of embezzlements committed by agents entrusted with property, be it enacted, that if any money or security for the payment of money, shall be entrusted to any banker, merchant, broker, attorney, or other agent, with any direction in writing to apply such money, or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and he shall, in violation of good faith, and contrary to the purpose so specified, in anywise convert to his own use or benefit such money, security or proceeds, or any part thereof respectively, every such offender

guilty of a misdemeanor, and being convicted thereof, liable, at the discretion of the court, to be transported to any place beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; and if any person, being an agent or valuable security, or any power of attorney for the transfer of any share or interest in any public stock or other of the United Kingdom, or of any part thereof, or of any foreign state, or in any fund of any body corporate, company, or society, shall be entrusted to any banker, merchant, broker, attorney, or other agent, for safe custody, or for any special purpose, without any authority to sell, negotiate, transfer, or otherwise dispose of the same, and he shall, in violation of good faith, and contrary to the trust or purpose for which such chattel, security, or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or to the use of any other person, any such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof; and every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore mentioned.

Provided always, and be it enacted, that nothing hereinbefore contained relating to agents shall affect any trustee in or under any instrument whatever, or any mortgagee of any property real or personal, in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trustee or mortgagee; nor shall restrain any banker, merchant, broker, attorney, or other agent, from receiving or paying any money which shall be or become actually due and payable to or by virtue of any valuable security, according to the effect thereof, in such manner as he might have done if no such instrument had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession upon which he shall have any lien, claim, or demand, or which he may be entitled to by law so to do, unless such sale, transfer, or other disposition shall be wilfully and fraudulently extended to a greater amount of such securities or effects than shall be requisite for satisfying such lien, claim, or demand.

That if any factor or agent, entrusted for the purpose of receiving or delivering any goods or merchandize, or entrusted with any bill of lading, warehouse keeper's or wharfinger's certificate, or any other document, or any note, or any warrant or order for delivery of any goods or merchandize, shall, for his own benefit, and in violation of good faith, deposit or pledge any such goods or merchandize, or any part of the said documents, as a security for any money or other thing borrowed or received by such factor or agent before the time of making such deposit or pledge, or intended to be so borrowed or received, every such offender shall be

2 G. 4, c. 55.

Like punishment for agents embezzling or converting any goods or valuable security entrusted to them for safe custody, or for any special purpose.

Not to affect trustees or mortgagees;

nor bankers, &c., receiving money due on securities;

or disposing of securities on which they have a lien.

Factors pledging for their own use any goods, or documents relating to goods entrusted to them for the purpose of sale, a misdemeanor, punishable by transportation, &c.

9 G. 4, c. 55.

Not to extend to cases where the pledge does not exceed the amount of the lien.

Provisions as to agents shall not lessen remedy by the party aggrieved; but conviction shall not be receivable in evidence in actions.

Offender shall not be convicted by evidence disclosed by him.

guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same shall not be made a security for, or subject to the payment of any greater sum of money than the amount which, at the time of such deposit or pledge, was justly due and owing, or *bona fide* supposed by such factor or agent to be due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent, and of any other engagement made by such factor or agent on account of his principal, and to the payment of which such factor or agent is legally liable.

45. Provided always, and be it enacted, that nothing in this act contained, nor any proceeding, conviction, or judgment to be had or taken thereupon against any banker, merchant, broker, factor, attorney, or other agent, or any such clerk or servant, or person employed in the capacity of clerk or servant, as aforesaid, shall prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any such offence might or would have had if this act had not been made; but nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; and no banker, merchant, broker, factor, attorney, or other agent or aforesaid, or clerk or servant, or person employed in the capacity of clerk or servant, shall be liable to be convicted of any offence of embezzlement against this act, in respect of any act done by him, by any evidence disclosed by him in consequence of any compulsory process of any court of law or equity, in any action, suit, or proceeding, which shall have been *bona fide* instituted by any party aggrieved, or by any evidence disclosed by such person in any examination or deposition before any commissioners of bankrupt.

[Accessaries, p. 9. Admiralty offences, p. 14. Pardon, p. 128. Removing goods to another part of the United Kingdom, p. 140. Restitution, p. 9. "Valuable security," its meaning, p. 2.]

SECTION 6.

Cheats and Frauds.

Obtaining money, &c., by false pretences, a misdemeanor.

9 Geo. 4, c. 55, s. 46.—And whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud; for remedy thereof, be it enacted, that if any person shall

by any false pretence(a) obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same; every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or by both, as the court shall award: provided always, that if upon the trial of any person indicted for such misdemeanor it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall * by reason thereof be entitled to be acquitted of such misdemeanor; and no such indictment shall be removable by certiorari; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

5 & 6 Will. 4, c. 34, s. 1. [*Recites the proviso in 9 Geo. 4, c. 55, s. 46, and the omission of the word "not," at * between the words "shall" and "by."*] Be it, &c., that the said hereinbefore recited proviso of the said act of parliament shall be deemed, construed, and taken to have such and the same effect, to all intents and purposes whatsoever, as if the said word "not" had been originally inserted between the words "shall" and "by."

9 G. 4, c. 55.
Omission of the word "not" in 9 G. 4, c. 55, s. 46, supplied.

(a) *Rex v. Blackwood*. Indictment for obtaining money under false pretences. The prisoner, pretending to be deaf and dumb, presented a letter to the prosecutor, purporting to have been written by Doctor Orpen, of Dublin, alleging the bearer's privation of faculties, and recommending him as a fit subject for charitable relief. He also produced a list of persons, several of whom had sums annexed to their names: these, he informed the prosecutor, were the persons to whom he had obtained letters from Doctor Orpen, and those to whose names no sum was annexed had not as yet been solicited. Upon these representations, a sum of money was given to the prisoner. It appeared that he was neither deaf nor dumb, and that the letter produced was a forgery. The case was tried at Mallow Sessions, April 1830, before the assistant barrister (Martley, K.C.); when the prisoner was found guilty, and sentenced to be transported. A memorial was afterwards presented to the lord lieutenant on his behalf; but upon inquiry into the facts, and after calling for the report of the learned assistant barrister, it was deemed proper that the sentence should be carried into execution.

Pretending to be deaf and dumb, and presenting a forged letter to obtain money, is punishable under this act.

On evidence that a promissory note was obtained under a false pretence, and afterwards, and before the day in the indictment, was converted into cash by the defendant, it was held to be the same as if money had been originally received by the deception used. *Rex v. Shee*, *Middlesex Sess.* 1800. *Mac Nally*, *Law of Ev.* 641.

Indictment for obtaining money under false pretences, is supported by evidence of a promissory note obtained and afterwards converted into cash.

6 & 7 W. 4, c.
14.

Bankrupt not
surrendering
and deliver-
ing up his
estate, or em-
bezzling to
value of £10,
felony.

6 & 7 Will. 4, c. 14(a), s. 130.—That if any person against whom any commission has been issued, or shall hereafter be issued, whereupon such person hath been or shall be debted bankrupt, shall not, before three of the clock upon the forty-second day after notice thereof in writing, to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the Dublin Gazette of issuing of the commission and of the sittings of the commissioner, surrender himself to him, and sign or subscribe such surrender, and submit to be examined before him from time to time upon oath, or, being a Quaker or Moravian or Separatist, upon solemn affirmation or declaration; or if any such bankrupt upon such examination shall not discover all his real or personal estate, and how and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto, (except such part as shall have been really and bona fide before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family); or if any such bankrupt shall not upon such examination deliver up to the commissioner all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power, (except the necessary wearing apparel of himself, his wife, and children); or if any such bankrupt shall remove, conceal, or embezzle any part of such estate to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors; every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour, in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

Lord chan-
cellor may
enlarge time
for surrender.

131. That the lord chancellor shall have power, as often as he shall think fit, from time to time to enlarge the time for the bankrupt surrendering himself, for such time as the lord chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself.

160. [The powers and duties of the lord chancellor may be exercised and performed by a lord keeper, or lords commissioners of the great seal.]

1 & 2 Geo. 4, c. 59, (b,) s. 41.—That from and after the pass-

(a) Entitled "An act to amend the laws relating to bankrupts in Ireland."

(b) Entitled "An act for the relief of insolvent debtors in

by of this act, in case any prisoner shall, with intent to defraud his creditor or creditors, wilfully and fraudulently omit in his schedule, as aforesaid, any effects or property whatsoever; or shall retain or except out of the schedule, as wearing apparel, bedding, working tools and implements, and other necessities, more in value than fifteen pounds; every such person so offending, and any person aiding and assisting him to do the same, shall, upon being thereof convicted by due course of law, be adjudged guilty of a misdemeanor; and thereupon it shall and may be lawful for the court, before whom such offender shall have been so tried and convicted, to sentence such offender to be imprisoned and kept to hard labour for any period of time not exceeding three years.

1 & 2 G. 4, c.
59.

Insolvent making wilful omission in his schedule; imprisonment, not exceeding three years.

Unstamped copies of the proceedings of the insolvent court, evidence in all cases.

In indictments against insolvents for omitting property from the schedule, the substance of the offence charged alone, may be set out.

54. That the chief clerk of the court to be established by virtue of this act shall, on the reasonable request of any such prisoner, or of any creditor or creditors of such prisoner, or his, her, or their attorney, produce and show to such prisoner, creditor or creditors, or his, her, or their attorney, at such times as the said court shall direct, such petition, schedule, order, and judgment, and all other orders and proceedings made and had in such matter; and that a true copy of every such petition, schedule, order, judgment, and other proceedings, signed by the chief clerk in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order, judgment, or other proceedings, as the case may be, without being written on stamp paper, shall at all times be admitted, in all courts whatever, as legal evidence of the same respectively.

3 Geo. 4, c. 124, s. 31.—That in every information or indictment against any person for having, with intent to defraud his creditors, wilfully and fraudulently omitted in his schedule, as finally amended and filed in the said court, at the time of the order for his discharge from actual custody, any effects or property whatsoever, or retained or excepted out of the schedule as wearing apparel, bedding, working tools and implements, and other necessities more in value than fifteen pounds, or against any person for aiding and assisting to do the same; it shall be sufficient to set forth the substance of the offence charged on the defendant, without setting forth the petition, or conveyance, or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or balance sheet, order for hearing, adjudication, order for discharge, or remand, or any warrant, rule, order, or proceeding, of or in the said court, except so much of his schedule as may be necessary for that purpose.

Ireland. Continued with 3 Geo. 4, c. 124, by 6 & 7 Will. 4, c. 23, for three years from the 21st of June, 1836, and thenceforth, until the end of the next session of parliament.

9 G. 4, c. 55.

[Accessaries, p. 9. Admiralty offences, p. 14. Pardon, p. 12. Removing goods from one part of the United Kingdom to another, p. 14. Restitution, p. 9. "Valuable security," p. 2.]

SECTION 7.

Sacrilege.

Stealing in or from a church, with breaking in or out, felony.

9 Geo. 4, c. 55, s. 10.—That if any person shall break and enter any church, meeting house, chapel, or other place of divine worship, and shall steal therein or therefrom, any chattel, or having stolen any chattel in or from any church, meeting house, chapel, or other place of divine worship, shall break out of the same; every such offender, being convicted thereof, shall suffer death as a felon.

Punishment of death for sacrilege repealed, and transportation substituted.

5 & 6 Will. 4, c. 81(b). [Recites 36 Geo. 3, c. 7, post, 249; 52 Geo. 3, c. 143; 7 & 8 Geo. 4, c. 29; and 9 Geo. 4, c. 55, s. 10; and the expediency of mitigating the punishment of death.] Be it, &c., that so much of each of the said acts as inflicts the punishment of death upon persons convicted of any of the offences therein and hereinbefore specified, shall be, and the same is hereby repealed; and that from and after the passing of this act, every person convicted of any of the offences in the said act, so specified, or of aiding or abetting, counselling, or procuring the commission thereof, shall be liable to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned with or without hard labour, in the common gaol or house of correction, for any term not exceeding four years.

6 & 7 Will. 4, c. 4(c). [Recites 5 & 6 Will. 4, c. 81; and a doubt whether offenders are liable to any punishment, on account of a clerical error therein.] Be it, &c., that the same

The property in the contributions at a charity sermon, is vested in the treasurer of the charity.

(a) *Rex v. Smith*. The prisoner was indicted before the Recorder of Dublin (Sir J. Greene), for having feloniously taken money from a poor plate in a church, which had been collected at a charity sermon. The property was laid in the hands of the treasurer of the charity. Counsel for the prisoner objected that no ownership had been shown to exist in such treasurer; but the court upheld the indictment, and declared that the property in the money collected vested in the treasurer, and in him alone, immediately on its being laid on the plate by the contributors, in 1819. *M'Derm. Cr. Code*, 78.

(b) Entitled, "An act for abolishing capital punishments in cases of letter stealing and sacrilege."

(c) Entitled, "An act to amend an act of the last session for abolishing capital punishments in cases of letter stealing and sacrilege."

shall be read as if, instead of the words, "in the said act specified," the words, "in the said acts so specified," had been inserted in the said act of the last session; and that all persons who may hereafter be duly convicted of any of the offences mentioned in the said act of the last session, shall and may be sentenced by the court or judge by or before whom such offenders may be tried, to transportation for life, or for any term of years not less than seven, or to be imprisoned for any term not exceeding three years, with or without hard labour, and for any period of solitary confinement during such imprisonment, at the discretion of such court or judge.

6 & 7 W. 4, c.

4.

Amendment
of 5 & 6 W. 4,
c. 81.

3 & 4 Will. 4, c. 37(a), s. 72.—That if any church, chapel, or other building used for religious worship, according to the usage of the united church of England and Ireland, shall be maliciously or wantonly demolished, pulled down, burned, or set fire to, or in any manner maliciously or wantonly injured or damaged; it shall and may be lawful for the said ecclesiastical commissioners, or any person or persons to be by them deputed in that behalf by writing under their common seal, to sue for and recover satisfaction and amends for such malicious or wanton demolition, burning, firing, or injury or damage, as aforesaid, at the next assizes to be held for the county in which such church, chapel, or other building may be situate, or if in the county of Dublin, at the next presenting term, or if in the city of Dublin, at the next quarter sessions for the said city, by exhibiting to the judge or judges of assize, or to the court of King's Bench for the said county of Dublin, or to the recorder of the city of Dublin, if at such quarter sessions, a petition praying such satisfaction and amends as aforesaid, and therein setting forth particularly the injury or damage done or committed, and the particular amount and nature thereof, by what number of persons such injury or damage was done or committed, and the names or descriptions of such offenders, so far as the same shall be known to the petitioners; and the matter of such petition shall be inquired into by such judge or judges of assize, or court of King's Bench, or recorder, in open court, in the presence of the grand jury impannelled and sworn at such assizes, or presenting term, or sessions, on the oath of such person or persons as may be produced to testify as to the same; and if, on consideration of the matter, such judge or judges of assize,† or recorder, shall be of opinion that such demolition, burning, firing, or other injury or damage, was wantonly or maliciously done, such judge or judges shall inquire into the amount of such injury or damage done or committed as aforesaid; and the said grand jury shall thereupon, and they are hereby required, pursuant to the direction of such judge or judges, court of King's Bench, or recorder as aforesaid, to present such sum or sums of money as shall

Compensation may be granted by grand jury presentment, for malicious injury to churches.

† Sic.

(a) Entitled, "An act to alter and amend the laws relating to the temporalities of the church in Ireland."

3 & 4 W. 4, c.
37.

Traverse of
presentment
above £5, to
be tried at
same or next
assizes.

Notice there-
of to be given
within thirty
days after
offence com-
mitted.

appear to be the amount of the injury or damage committed as aforesaid, to be raised either on the county, county of a city, or town, barony, town or towns, parish or parishes, in or near which such offence shall have been committed, and in such proportions as they shall think fit; which sum or sums so presented as aforesaid shall be apportioned, levied, and raised, by such ways and means, and in such form and manner as other public money presented at the said assizes, or presenting term, or sessions; and such money shall be paid to the said commissioners, or to the person or persons by them deputed as aforesaid, and be by such commissioners applied to rebuild or repair such church, chapel, or other building, and be for such purpose expended by such person or persons, in such manner, and subject to such regulations and security for the due application thereof as they shall think fit. Provided, that if any person or persons shall find himself, herself, or themselves aggrieved by any presentment to be made in pursuance of this act; such persons or persons, in case the sum so presented do exceed the sum of five pounds, shall or may at the said assizes, or presenting term, or sessions, traverse the same: which traverse shall be tried at the same or *next ensuing* assizes, presenting term, or sessions, as the judge or judges who shall allow the same shall think fit; and if, on such traverse, the issue shall be found for the traverser, such presentment shall be discharged, otherwise the same shall be final and conclusive to all persons; and in case the said issue shall be found against the traverser, it shall and may be lawful to and for the judge before whom the same shall be tried, in case he shall see fit, to award the costs thereof to be paid by the traverser, to be taxed and certified by the clerk of the crown; the payment whereof may be enforced, if necessary, by a summary order of his Majesty's Court of King's Bench in Ireland. Provided always, that the said commissioners, or the person or persons by them deputed as aforesaid, or the rector, curate, or other officiating minister, or, in case of vacancy of the benefice, any two inhabitants of the parish, within thirty days after such offence shall have been committed, shall give notice thereof to the high constable of the barony, and to the churchwardens of the parish where such offence shall have been committed (if such high constable or churchwarden shall respectively reside within such barony and parish), who are hereby required forthwith to publish the same within such barony or parish; and if such high constable or churchwardens shall not reside therein as aforesaid, then such notice shall be given to some two inhabitants of such barony or parish.

4 & 5 Will. 4, c. 90(a), s. 20.—That in case any such wan-

(a) Entitled, "An act to amend an act made in the third and fourth year of the reign of his present majesty, intituled, 'an act to alter and amend the laws relating to the temporalities of the church in Ireland.'"

malicious injury or damage, as in the said recited act, shall be committed in or to any church, chapel, or building used for religious worship, according to the usage of the church of England and Ireland, it shall and may be lawful for the said ecclesiastical commissioners, or any person or persons to be by them deputed in that behalf, by writing under their common seal, to sue for and recover satisfaction and redress pursuant to the provisions of the said recited act(a), for any wilful and malicious injury or damage, either at such periods as in and by the said recited act for that purpose provided, or at the second assizes to be held after the commission of such injury or damage for the county in which such chapel, or other building may be situate; or if in the county of Dublin, at the second presenting term; or if in the city of Dublin, at the second quarter sessions respectively after the commission of such injury, and that all powers and provisions contained in the said recited act, applicable to the suing for, or recovery of such satisfaction at the next assizes, presenting term, or quarter sessions respectively, shall extend and be applicable to the suing for and recovery of such satisfaction and amends at the next assizes, presenting term, or quarter sessions respectively.

4 & 5 W. 4, c. 90.

Compensation for injuries to churches may be recovered at next or second assizes.

Assizes, p. 9. *Arson of churches, &c.*, p. 36. *Demonstrations of churches*, p. 144. *Pardon*, p. 12. *Removing goods from the part of the United Kingdom to another*, p. 14. *Residence*, p. 9.

SECTION 8.

Burglary and Housebreaking.

o. 4, c. 55, s. 11.—That every person convicted of burglary shall suffer death as a felon: and it is hereby declared, that any person shall enter the dwelling-house of another with intent to commit felony, or being in such dwelling-house, shall commit felony, and shall in either case break out of the said dwelling-house in the night time; such person shall be deemed guilty of burglary.

Burglary; felony, death.

That if any person shall break and enter any dwelling-house and steal therein any chattel, money, or valuable security, of the value of five shillings or more, or shall steal any such property, to any

Housebreaking, and stealing in a house.

1 & 4 Will. 4, c. 37, s. 72, *ante*, 33.

Procuring a door to be opened in the night, by pretending to have a letter to deliver, or by any other device, if there be any pretence to show a preconcerted plan or intent to rob the party that means, is burglary, though the party so entering be immediately apprehended, by persons waiting inside specially for that purpose. *Anon. Green-street Commission*, 1799, *Muc* *Ev.* 602.

Causing a door to be opened under false pretences, and entering at night with intent to rob, is burglary.

23 & 24 G. 3, one part of the United Kingdom to another, p. 14. Restitution, p. 9. "Valuable security," its meaning, p. 2.]
 c. 20.

SECTION 9.

Arson.

Rioters
burning, &c.,
any building,
felony, death.

23 & 24 Geo. 3, c. 20, s. 7.—And for the better preservation of the peace, and the security of the property of his majesty's subjects against all riotous, unlawful, and tumultuous attempts to destroy or injure the same; be it, &c. that if any persons unlawfully, riotously, and tumultuously assembled together, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, or wilfully set fire to, or attempt to set fire to, or break into, or attempt to break into any building, dwelling-house, warehouse, workshop, workhouse, mill, granary, storeroom, barn, stable, or any house, building, or outhouse whatsoever; every such demolishing, pulling down, breaking into, setting fire to, or beginning to demolish, or pull down, or attempting to break into, or set fire to, shall be adjudged felony without benefit of clergy; and the offenders therein, being thereof lawfully convicted, shall be adjudged felons, and suffer death, as in the case of felony, without benefit of clergy(a).

Setting fire to
a house, out-
building,
church, or
chapel; felo-
ny, death.

9 Geo. 4, c. 56(b), s. 2.—That if any person shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, hay-yard, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person; or if any person shall unlawfully and maliciously set fire to any church, chapel, or place of religious worship; every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

Setting fire to
a coal mine;
felony, death.

6. That if any person shall unlawfully and maliciously set fire to any mine of coal, or cannel coal; every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

Malice
against the
owner, not
essential to
any offence
under this
act.

32. That every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment, or upon summary conviction, shall equally apply and be enforced, whether the offence

(a) The operation of this act is saved by the 31st section of the act, 9 Geo. 4, c. 56.

(b) Entitled, "An act for consolidating and amending the laws in Ireland, relative to malicious injuries to property." By sections 1 and 54 it is enacted, that the act shall extend to Ireland alone, and shall commence and take effect on the first of September, 1828.

shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise. 9 G. 4, c. 56.

33. That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender.

Principals in the second degree, and accessories.

Abettors in misdemeanors.

35. And for the more effectual apprehension of all offenders against this act, be it enacted that any person found committing any offence against this act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law.

Persons in the act of committing any offence may be apprehended without a warrant.

SECTION 10.

Malicious Injuries of other Kinds.

11 Geo. 3, c. 7, (a) s. 2.—That if any such person or persons convicted, shall commit any of the offences aforesaid a second time, or if, (b) from and after the said first day of June next, any person or persons shall wilfully and maliciously pull, throw down, or otherwise destroy any storehouse or granary, or other place where corn shall be then kept, in order to be exported, or sent from one part to another of this kingdom coastways; or shall unlawfully enter any such storehouse, granary, or other place, and take and carry away any corn, flour, meal, or grain therefrom, or shall throw abroad, or shall spoil the same, or any part thereof, or shall unlawfully enter on board any ship, barge, boat, or vessel; and shall wilfully and maliciously take and carry away, or throw out therefrom, or otherwise spoil or damage any meal, flour, wheat, or other grain therein, intended for exportation, or to be sent coastwise as aforesaid, every person so offend-

Destroying granaries; taking or spoiling the corn therein, or on board ship; felony, transportation.

(a) The operation of this act has been saved by the act 9 Geo. c. 56, s. 31.

(b) The parts in italics have been repealed by the act 10 Geo. c. 34, s. 1.

11 G. 3, c. 7.

ing, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported for the space of five years, in like manner as other felons are directed to be transported by the laws and statutes of this realm ; and if any such offenders, so transported, shall return into this kingdom before the expiration of the said five years, he or she shall suffer death as a felon, without benefit of clergy.

No corruption
of blood.

3. Provided always, that no attainder from any offence, made felony by virtue of this act, shall make or work any corruption of blood, loss of dower, or disinherittance of heir or heirs.

Destroying
manufactur-
ing imple-
ments, or fire
or other en-
gine for
mines; felony,
death.

23, 24 Geo. 3, c. 20, (a) s. 8.—That if any persons unlawfully, riotously, and tumultuously assembled, shall unlawfully and by force, in the day or night, destroy or begin to destroy any machine or part of a machine, or any tool or utensil used or intended to be used for the purpose of manufacture ; or shall unlawfully or by force cut, break, or destroy any goods manufactured or unmanufactured ; or if any person or persons shall wilfully or maliciously set fire to, burn, demolish, pull down, or otherwise destroy any fire engine, or other engine, which have been or shall be erected for draining water from any colliery or mine, or for raising coals or minerals out of any colliery or mine ; every person convicted thereof shall be adjudged a felon, and suffer death as in the case of felony, without benefit of clergy.

Expenses of
prosecution
to be present-
ed by grand
jury.

12. And, for the more effectual prosecution of all offenders against this act, be it, &c., that it shall and may be lawful for the court, or the judge or judges before whom any person shall be tried for any such offence, to direct the grand jury of the county, county of the town or city, to present (to be raised off the county, county of town or city, which they are hereby empowered and required to do on such direction) the amount of all such sum or sums of money as shall be proved before them in open court, to have been expended in the taking and prosecuting, or bringing to justice such person or persons, whether such person or persons shall have been acquitted or not ; the same to be levied as other monies presented by the grand juries are levied ; and to be paid to the person or persons who severally expended the same.

Destroying,
or entering
any place with
intent to de-
stroy goods
in the loom,
&c., or any
such manu-
facturing ma-
chinery ; fe-
lony, trans-
portation.

9 Geo. 4, c. 56, s. 3.—That if any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any goods or article of silk, woollen, mohair, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking-hose, or lace respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture ;

(a) The operation of this act is saved by the 9 Geo. 4, c. 56, s. 31.

or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, mohair, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles; or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid; every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit,) in addition to such imprisonment.

9 G. 4, c. 56.



4. That if any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless any threshing machine, or any machine or engine, whether fixed or moveable, or any tool or implement prepared for or employed in any manufacture whatsoever, (except the manufacture of silk, woollen, linen, mohair, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking-hose, or lace); every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit,) in addition to such imprisonment.

Destroying machinery in other manufactures, or threshing machines, &c.; felony, transportation.

5. That if any artificer, workman, journeyman, apprentice, servant, or labourer, shall wilfully and unlawfully damage, spoil, or destroy any goods, wares, or work committed to his care or charge, without the consent of the person by whom he shall be hired, retained, or employed; every such offender, being lawfully convicted thereof before any justice or justices of the peace, shall forfeit and pay such sum of money as shall appear to the justice or justices to be a reasonable compensation for the damage, injury, spoil, or destruction so committed, not exceeding in any case the sum of five pounds; which sum of money shall be paid to the party grieved; and every person so convicted shall, in default of immediate payment, be committed to the gaol of the county of the city or town, or to the house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three calendar months.

Penalty on journeymen, &c., spoiling goods or work, 5*l.* to the party grieved.

7. That if any person shall unlawfully and maliciously cause any water to be conveyed into any mine, or into any subterraneous passage communicating therewith, with intent thereby to

Drowning any mine, or filling up any shaft, &c.,

**Destroying,
&c., any
fence, wall,
stile, or gate.**

23. That if any person shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively ; every such offender, being convicted before a justice or justices of the peace, shall for the first offence forfeit and pay the amount of the injury done, and also such sum of money, not exceeding five pounds, as to the justice or justices shall seem meet : and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner ; every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice or justices shall think fit.

24. That every person who, being possessed in any manner or right whatever of any dwelling-house or other building held under or by virtue of any lease or agreement, or for any term of years, or other less term, certain or at will, (whether the possession of such dwelling-house or other building, or part of such dwelling-house or other building, shall have been obtained for the fraudulent and malicious purpose of pulling down or demolishing the same, or for any other purpose whatever,) shall wilfully, fraudulently, or maliciously, and not for the purpose of any intended improvement or beneficial alteration therein, pull down or demolish, or begin to pull down or demolish the same, or commit any other unlawful waste or destruction thereof or thereto; or shall pull down or sever from the freehold any fixture or utensil, being within or appurtenant to such dwelling-house or other building, or used or occupied therewith, or which in a due course of occupancy, ought not to be so pulled down or severed from the freehold; or who shall wilfully and knowingly aid, abet, or assist in the same; or who shall wilfully and knowingly purchase, or contract to purchase the materials or any part of the materials of which such dwelling-house or other building was constructed, or any fixture or utensil being within or appurtenant to any such dwelling-house or other building, or part of such dwelling-house or other building, or used and occupied therewith, and which in due course of occupancy ought not to be pulled down and severed from the freehold; shall be deemed and is hereby declared to be guilty of a misdemeanor, and shall be subject and liable, on conviction thereof, to the like pains and penalties as in cases of misdemeanor.

9 G. 4, c. 56.

Persons possessed of houses under lease, &c., who shall demolish or waste them, declared guilty of misdemeanor.

25. That in all cases where any dwelling-house or other building, or any part of any dwelling-house or other building, shall be held by virtue of any lease or agreement, or for any term of years, or other less term, certain or at will, (whether the possession of such dwelling-house or other building, or any part of such dwelling-house or other building, shall have been obtained by fraud or not,) whenever it shall be suspected that any person or persons is or are about to pull down or demolish, or to commit any unlawful waste or destruction upon such dwelling-house or other building, or part of such dwelling-house or other building, it shall and may be lawful to and for any owner, lessor, or landlord thereof, or any other person or persons entitled to the same, or interested in the preservation thereof, or for any trustee or agent acting upon the part or behalf of any owner, lessor, landlord, or person so interested, to make and take an oath or affidavit in writing, (or affirmation in writing, if a Quaker,) before any justice of the peace or magistrate for the county, city, town, or other place within which such dwelling-house or building shall be situate, stating the belief and suspicion of the person or persons making such affidavit or affirmation, that some person or persons in the possession or occupation of such dwelling-house or other building, or of some part thereof,

When suspicion is entertained of intent to demolish or injure houses; owners, &c. may make oath thereof before a magistrate.

9 G. 4, c. 56.

Magistrate shall thereupon give notice to the parties not to proceed without the license of such magistrate.

Service of such notice.

Persons proceeding in demolishing houses after such notice, guilty of misdemeanor.

Persons pulling down houses after

or by the permission or collusion of some person in the occupation of such dwelling-house or other building, or of some part of such dwelling-house or other building, hath or have an intention to commit, or do propose to commit, some such wilful or fraudulent waste and destruction as is hereinbefore described, or if any such waste or destruction shall have been commenced there, that the same was fraudulent or malicious, and not for the purpose of any improvement or beneficial alteration in such dwelling-house or other building, or part of such dwelling-house or other building, and which oath and affirmation such justice or magistrate is hereby empowered and required to administer; and upon such affidavit or affirmation being made by such person or persons as aforesaid, it shall and may be lawful for such justice or magistrate to issue a notice in writing, signed by him, stating that information on oath or affirmation has been received that some person or persons occupying such dwelling-house or other building, or acting under or by the authority or permission of, and in collusion with such occupier or occupiers of such dwelling-house or other building, intends or intend, or is or are about to commit wilful and fraudulent waste, by pulling down and destroying such dwelling-house or other building, or any part of such dwelling-house or other building, and cautioning and admonishing all such persons, and all persons whomever, not to proceed to pull down or destroy, or otherwise injure such dwelling-house or other building, or any part of such dwelling-house or other building, until special leave, license, and authority in writing for that purpose shall be first procured from and given by the justice or magistrate by whom such notice shall be signed: and such notice shall be served on any and every person by whom it shall be suspected that such waste and destruction shall be intended to be committed, or by whom any such waste and destruction shall have been commenced, if such person can be found, and if not, then such notice shall be affixed on the principal door or entrance of such dwelling-house or other building: and every and any person who, after being duly served with such notice, or after such notice shall be posted on the principal door or entrance of such dwelling-house or other building, shall, without such leave, license, or authority as aforesaid, pull down or demolish, or shall begin to pull down or demolish, or shall proceed in pulling down or demolishing, any such dwelling-house or other building, or any part of such dwelling-house or other building, or who shall wilfully and unlawfully aid, abet, or assist in the pulling down or demolishing, or beginning to pull down or demolish, or proceeding in pulling down or demolishing of any such dwelling-house or other building, or any part of such dwelling-house or other building, or in committing any unlawful waste or destruction thereof or therein, shall be deemed, and is hereby declared to be guilty of a misdemeanor.

26. That if any person shall, after the service or posting of such notice, begin to pull down and destroy, or shall proceed in

g down or destroying, or shall otherwise wilfully and maliciously injure and commit unlawful waste in, on, or to any dwelling-house or other building, or any part of such dwelling-house or other building; or if any person or persons, having committed any such waste, pulling down, or destruction, shall immediately desist from continuing and committing such offence, it shall and may be lawful for any justice of the peace or magistrate, and he is hereby authorized and required, to issue a warrant, under his hand and seal, directed to any constable or constables, authorizing such constable or constables to prevent pulling down or destruction of such dwelling-house or other building, or any part of such dwelling-house or other building, and to take into custody and apprehend every person found, aiding and assisting in such pulling down and destruction, and to bring all such persons before such justice or magistrate, and it shall be lawful for such justice or magistrate to commit any such offender so taken and apprehended, to any gaol or prison, there to remain without bail or surety, until such offender shall give good and sufficient security, by recognizance conditioned not to commit or proceed in committing such wilful waste and destruction; and in case any such waste and destruction shall have been in part committed, the offender shall also be conditioned to rebuild and repair such dwelling-house or other building, so as to leave the same in as good tenable state and condition as such dwelling-house or other building was in, previous to the commission of such waste and destruction aforesaid; and which recognizance every such justice or magistrate is hereby authorized and required to take.

Provided always, and be it further enacted, that in case any person or occupier of any dwelling-house or other building shall be required so to do by any such justice or magistrate aforesaid, enter into a good and sufficient security by recognizance, with two sufficient sureties, in such sum as such justice or magistrate shall require, conditioned to rebuild and repair any such dwelling-house or other building, within six calendar months from the date of such recognizance, and to put such dwelling-house or other building in as tenable state of repair, as such the like state of repair, as the same was in previous to the commencement of any wilful waste and destruction thereof or thereon; then and in every such case, it shall and may be lawful for such persons so entering into such recognizance, and their servants and assistants, to proceed in making any repair or alterations and improvements of or in such dwelling-house or other building, as if this act had not been made; anything herein contained to the contrary notwithstanding.

That if any such notice as aforesaid shall be personally served on any person as aforesaid, or in case personal service cannot be effected, if such notice shall be regularly posted, according to the directions in this act contained, on the door or principal entrance of any such dwelling-house or other building,

9 G. 4, c. 56.

such notice may be apprehended and imprisoned until they give security not to proceed in such destruction, and to repair damages.

Persons may proceed in repairing houses, on giving security to magistrates.

Notice good, though not addressed to any person.

9 G. 4, c. 56.

If a person summarily convicted shall not pay, &c., the justice may commit him.

Scale of imprisonment.

44. That in every case of a summary conviction under this act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the justice or justices, together with costs, if awarded, (which costs such justice or justices is and are hereby authorized to award) shall not be paid, either immediately after the conviction, or within such period as the justice or justices shall at the time of the conviction appoint; it shall be lawful for the convicting justice or justices (unless where otherwise specially directed), to commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice or justices, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both, (as the case may be,) together with costs, shall not exceed five pounds; or for any term not exceeding four calendar months, where the amount of such forfeiture or penalty, or of both (as the case may be,) together with costs, shall exceed five pounds, and shall not exceed ten pounds; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs.

[Accessaries, p. 37. Admiralty offences, p. 14. Malicious intent, p. 36. Pardon, p. 12. Summary proceedings, p. 10.]

SECTION 11.

Forgery and Personation.

Forging a deed, will, bond, bill, note, receipt, &c., or uttering the same; felony.

3 Geo. 2, c. 4, (a) s. 1.—Whereas it has been found by experience, that the laws now in being are not sufficient to prevent the pernicious and abominable crimes of forgery, perjury, and subornation of perjury, be it &c., that if any person, from and after the first day of May, in the year of our Lord (1730), shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly act or assist in the false making, forging, or counterfeiting any deed, last will or testament, bond, writing obligatory, bill of exchange, promissory note for payment of money to the value of five pounds, endorsement or assignment of any bill of exchange or such promissory note for payment of money, or any acquittance, or

(a) Entitled “An act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury; and to make it felony to steal bonds, notes, or other securities for payment of money; and for the more effectual transporting felons, vagabonds, and others.”

receipt, either for money or goods to the value of five pounds, with intention to defraud any person whatsoever ; or shall utter or publish as true, any false, forged, or counterfeited deed, last will or testament, bond, writing obligatory, bill of exchange, such promissory note for payment of money, endorsement or assignment of any bill of exchange, or such promissory note for payment of money, such acquittance or receipt either for money or goods, with intention to defraud any person, knowing the same to be false, forged, or counterfeited ; then every such person, being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and shall either be admitted to the benefit of clergy or of the statute, and be burned in the hand, or shall be transported, in such manner as other felons are, or shall be transported at the discretion of the court, before which such offender shall be convicted.

3 G. 2, c. 4.



17 Geo. 2, c. 11, s. 1.—Whereas the crime of forgery is, notwithstanding the laws now in force against such crime, frequently practised, to the great prejudice of his majesty's subjects : for the more effectual prevention thereof, be it enacted &c. that if any person or persons shall, upon an act of parliament made in this kingdom in the third year of the reign of his present majesty, intituled, &c. [3 Geo. 2, c. 4,] be indicted for felony, for falsely making, forging, or counterfeiting, or causing or procuring to be falsely made, forged, or counterfeited, or willingly acting or assisting in the false making, forging, or counterfeiting any deed, last will or testament, bond, writing obligatory, bill of exchange, promissory note for the payment of money to the value of five pounds, indorsement or assignment of any bill of exchange, or of such note, or any acquittance or receipt, either for money or goods to the value of five pounds, with intention to defraud any person, and thereof be lawfully convicted or attainted, shall be excluded from the benefit of clergy, or of the statute ; anything contained in the said statute made in the third year of the reign of his present majesty, to the contrary thereof in anywise notwithstanding : and that this clause of this present act relating to forgery, shall continue in force to the 25th day of March, (1757,) and from thence to the end of the then next session of parliament.(a)

Forging wills,
&c. ; felony,
death.

39 Geo. 3, c. 63, s. 1.—Whereas the crime of forgery hath lately very much increased in this kingdom, to the great injury of the trade and commercial credit thereof ; and the laws now in force do not inflict an adequate punishment upon the offenders concerned in such criminal practices ; for remedy whereof, be it enacted &c. that if any person, from and after the passing of his act, shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited,

Forging bills
of exchange,
promissory
notes, drafts,
receipts,
orders, &c.,
or uttering
such ; felony.

(a) This act was made perpetual by the 34 Geo. 3, c. 22, s. 5.

§. 3, c. 63. or willingly act, aid, or assist in the false making, altering, forging, or counterfeiting any promissory note, or any assignment, or endorsement of any promissory note, or any bill of exchange, or acceptance or assignment or endorsement of any bill of exchange for payment of money, or any accountable receipt, or any receipt, acquittance, or discharge for rent or other consideration, or any note, bill, or other security for payment of money, or any draft or warrant or order for the payment of money, or any order for the delivery of goods, or for procuring or giving credit, or shall falsely alter, or cause or procure to be falsely altered, or shall willingly act, aid, or assist in the falsely altering the number, principal sum, or any part of such note, or assignment or endorsement thereof, bill of exchange or acceptance, or assignment, or endorsement thereof, accountable receipt, or any receipt, acquittance, or discharge for rent or other consideration; or any note, bill, or other security for payment of money, or any draft or warrant or order for payment of money, or any order for the delivery of goods, or for procuring or giving credit, with intention to defraud any person or persons, bodies politic or corporate whatsoever ; or shall utter or publish as true, any false, forged, altered, or counterfeited promissory note, or endorsement or assignment of any promissory note, or any bill of exchange, or acceptance or assignment or endorsement of any bill of exchange for payment of money, or any accountable receipt, or any receipt, acquittance, or discharge for rent, or other consideration, or any note, bill, or other security for payment of money, or draft, or warrant, or order for the payment of money, or any order for the delivery of goods, or for procuring or giving credit, or in any of which the number, principal sum, or any part of such note, or endorsement, or assignment thereof, bill of exchange, or acceptance, or assignment, or endorsement thereof, accountable receipt, or any receipt, acquittance, or discharge for rent, or other consideration, or any note, bill, or other security for payment of money, or any draft, or warrant, or order for the payment of money, or any order for the delivery of goods, or for procuring or giving credit, shall have been falsely forged, counterfeited, or altered, with intention to defraud any person or persons, bodies politic or corporate whatsoever, knowing the same to be false, forged, altered, or counterfeited ; then every such person so offending, and being thereof lawfully convicted in due course of law, shall be deemed guilty of felony, *and shall suffer death as a felon, without benefit of clergy.*

43 Geo. 3, c. 139, s. 1.—Whereas the practice of forging and counterfeiting foreign bills of exchange, foreign promissory notes, and foreign orders for payment of money, hath of late greatly increased ; and plates of such bills, notes, and orders, have been, in some instances, engraven within the United Kingdom of Great Britain and Ireland, whereby such forgeries have been more easily committed ; and it is expedient that effectual provision

should be made for the preventing of the same : may it therefore please your majesty that it may be enacted, and be it &c., that if any person, from and after the passing of this act, shall, within any part of the United Kingdom of Great Britain and Ireland, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or knowingly aid or assist in the false making, forging, or counterfeiting any bill of exchange, or any promissory note, undertaking, or order for the payment of money, purporting to be the bill of exchange, promissory note, undertaking, or order for the payment of money, of any foreign prince, state, or country whatsoever, or of any minister or officer entrusted by or employed in the service of any foreign prince, state, or country, or of any person, or company of persons resident in any foreign state or country, or of any body corporate and politic, and body in the nature of a body corporate and politic, created or constituted by any foreign prince or state, with intent to deceive or defraud his majesty, his heirs and successors, or any such foreign prince, state, or country, or with intent to deceive or defraud any person or company of persons whomsoever, or any body corporate and politic, or body in the nature of a body corporate and politic whatsoever, whether the same be respectively resident, carrying on business, constituted or being in any part of the United Kingdom, or in any foreign state or country ; and whether such bill of exchange, promissory note, or order be in the English language, or in any foreign language or languages, or partly in one and partly in the other ; or if any person, from and after the passing of this act, shall, within any part of the said United Kingdom, tender in payment or in exchange, or otherwise utter or publish as true, any such false, forged, or counterfeited bill of exchange, promissory note, undertaking, or order, knowing the same to be false, forged, or counterfeited, with intent to deceive or defraud his majesty, his heirs and successors, or any foreign prince, state, or country, or any person or company of persons, or any body corporate and politic, or body in the nature of a body politic and corporate as aforesaid ; then every person so offending shall be deemed and taken to be guilty of felony, and being thereof lawfully convicted, shall be transported for any term of years not exceeding fourteen years.

2. That no person, from and after the passing of this act, shall, within any part of the United Kingdom of Great Britain and Ireland, engrave, cut, etch, scrape, or by any other means or device, make, or knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other means or device, making in or upon any plate whatsoever, any bill of exchange, or any promissory note, or undertaking or order for the payment of money, purporting to be the bill of exchange, promissory note, undertaking, or order of any foreign prince, state, or country, or of any minister or officer entrusted by or employed in the service of any foreign prince, state, or country, or of any person, or com-

43 G. 3, c. 139

Forging, &c.,
foreign bills
of exchange,
&c. ; felony.

Punishment.

Engraving
plates for
such foreign
bills, &c., or
printing
them ; mis-
demeanor.

43 G. 3, c. 139.



Punishment.

pany of persons, resident or being in any foreign state or country, or of any body corporate and politic, or body in the nature of a body corporate and politic, or constituted by any foreign prince or state, or any part of any such bill of exchange, promissory note, undertaking, or order, without an authority in writing for that purpose from such foreign prince, state, or country, minister or officer, person, company of persons, or body corporate and politic, or body in the nature of a body corporate and politic, or from some person duly authorized to give such authority; or shall within any part of the said United Kingdom, without such authority as aforesaid, by means of any such plate, or by any other device or means, make or print any such foreign bill of exchange, promissory note, undertaking or order for the payment of money, or any part thereof; or knowingly, wilfully, and without lawful excuse, (the proof whereof shall lie upon the party accused,) have in his or her custody, any such plate or device, or any impression taken from the same; and if any person shall offend in any of the cases aforesaid, he shall be deemed and taken to be guilty of a misdemeanor and breach of the peace, and being thereof convicted according to law, shall be liable for the first offence to be imprisoned for any time not exceeding six months, or to be fined, or to be publicly or privately whipped, or to suffer one or more of the said punishments; and for the second offence to be transported to any of his majesty's colonies or plantations for the term of fourteen years: provided always, that nothing in this act contained shall extend or be construed to extend in any manner whatsoever to repeal or alter any law or statute now in force for the prevention and punishment of the crime of forgery, in any respect whatsoever, within any part of the said United Kingdom.

Forging bank
of Ireland
notes, di-

21 & 22 Geo. 3, c. 16, (a) s. 15.—That if any person or persons shall forge, counterfeit, or alter any bank note, (b) bank

(a) Entitled, “*An act for establishing a bank, by the name of the Governor and Company of the Bank of Ireland.*”

The signing clerk is not a necessary witness to prove the forgery of a bank of Ireland note. It is sufficient if a person acquainted with the hand-writing of the signing clerk will pronounce that it is forged.

(b) The following questions were put by DOWNES, C. J. of *Ireland*, to Lord ELLENBOROUGH:—1st, Whether the signing clerk of a bank of *Ireland* note was a necessary witness to prove the forgery of it, unless he was accounted for; and whether proof by one acquainted with the hand-writing of such clerk would be sufficient primary evidence? 2ndly, Whether evidence in disproof of the genuineness of such note by a witness, from his acquaintance with other marks than the signature, viz. paper, copper-plate, &c., would suffice, without direct disproof of the signature?

To these queries, which were contained in a letter of *January*, 1805, his lordship conveyed the following reply:—

“My dear Lord, I received with particular satisfaction, the honor of your lordship's letter yesterday, and am happy on this, as I shall

bill of exchange, dividend warrant, or any bond or obligation, under the common seal of the said company, or any indorsement

21 & 22 G. 3,
c. 16.

vidend war-
rants or
bonds, or
knowingly ut-
tering them :
felony.

be on every other occasion, to communicate with your lordship and the judges of *Ireland*, on the subject of our common duties. Both the questions stated in your lordship's letter came immediately under the consideration of the twelve judges of *England*, in the case of *M'Guire*, (shortly and imperfectly stated in *East's P.C.* 1002,) who was convicted before Mr. Justice CHAMBRE, at *Lancaster Spring Assizes*, 1801, for knowingly uttering a forged bank note, which was proved to differ from genuine bank notes in the paper, in the water mark, the engraving, and the ink. The written date of the year was 1798, the printed figures under the *Britannia* being 1799. No proof was offered as to the handwriting of the cashier ; but one *Bliss*, the inspector of bank notes, looking at the note, said it was a forgery. Execution was respited, in order to take the opinion of the twelve judges, whether the want of that proof afforded an objection to the conviction. At a meeting of the judges, held, as I understand, on the 28th of *April*, and at which all the judges, except the chief justice of the Common Pleas, were present, Mr. Justice CHAMBRE was desired to make some inquiry as to what had been the practice in this particular ; the result of which inquiry was, that it had been usual, till a doubt had occurred to two of the judges, to ask a witness acquainted with the cashier's hand, whether that was forged or not ; and he referred to *Smith's case* (*East's P.C.* 1000), as the foundation on which those doubts were grounded. On consideration, all the judges were of opinion that the conviction was right. That *Bliss's* evidence must be taken as negating the handwriting of the cashier, without which the other circumstances of the paper, water mark, &c. were not sufficient. That if the cashier were dead, his hand-writing might be proved ; and that from the impossibility of having him as a witness at different places at the same time, where his testimony might happen to be wanted, upon prosecutions for the forgery of bank notes, there was ground for considering him in the light of one disabled to give evidence, and to bring him within the cases in which evidence of a person's hand-writing by other persons acquainted therewith, was admitted ; as where the person whose hand-writing is to be proved, is dead, interested, blind, or otherwise incapable of giving evidence on the subject. But that some person ought to be called to say that the hand-writing of the cashier was forgery, which, in different cases referred to, had either been done directly, or (*vide, inter alia, Rex v. Woolridge, Jan. Sess. .B.* 1801,) by the witness saying generally, the bill was forged. Indeed, unless the general answer is understood as immediately negating the hand-writing of the cashier, it would not be sufficient. One of the judges present doubted *Smith's case* ; and indeed, I think, that inasmuch as a party, by uttering an in-

1 & 22 G. 3,
c. 16.

thereon, or shall offer or dispose of, or put away any such counterfeit, or altered note, bill, dividend warrant, obligation, or the indorsement thereon, or demand the therein contained, or pretended to be due thereon, or thereof, of the said company, or any of their officers or knowing such note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, to be forged, counterfeited, altered, with intent to defraud the said company, or their successors, or any other person or persons whatsoever; every person so offending, and being thereof convicted in due form of law, shall be deemed guilty of felony, and suffer death as a felon without benefit of clergy.

taking or uttering notes, bills, or advertisements like bank of Ireland notes.

37 Geo. 3, c. 26, s. 2.—And for preventing injury to public credit, by unwary and other persons taking in payment, and otherwise receiving notes, inland bills, and bills of exchange, with certain words and characters, so nearly resembling notes and bills of the said governor and company of the bank of Ireland, as to appear to such person to be notes or bills of the bank of Ireland: and for preventing the practice of shop-keepers and others making use of notices, advertisements, or other papers, in their outward form similar to notes of the bank of Ireland, and engraved with flourishes and devices in the margin, and with a certain number in white letters on a black or any dark ground, in the manner the sum or value of notes of the bank of Ireland is expressed at the foot thereof, and in other respects resembling the same, by which frauds may be, and have been committed on ignorant or illiterate persons; be it enacted, that from and after the said first day of June, (1797,) if any person or persons,

instrument as true, with certain signatures thereupon, takes upon himself to affirm that such signatures are the genuine handwriting of the persons of whom they purport to be the handwriting; that, as against him, general negative evidence as to the hand-writing would be sufficient to throw the burthen upon him of proving it to be genuine. However, that point, whenever it occurs in the case of any forgery, other than of a note of the bank of *England*, or other instrument of a like public nature, will be fit to be considered; and I should certainly, on account of the very great respect due to the judges who ruled *Smith's case*, reserve it (if it occurred before me) for the determination of all the judges. Since the case of *M'Guire*, I know that Mr. Justice LAWRENCE, and Mr. Justice LE BLANC, (and, I believe, several other judges,) have, in the case of bank forgeries, required evidence of the signature not being the writing of the cashier, and have uniformly admitted such evidence, without the cashier himself being called; in the propriety of which practice I entirely concur. I am, &c. &c. ELLENBOROUGH,—*Bloomsbury-square, January 15, 1805.*"

without being authorized and appointed as aforesaid, (a) shall engrave, cut, etch, scrape in metzotinto, or shall cause or procure to be engraved, cut, etched, or scraped in metzotinto, or shall knowingly aid or assist in the engraving, cutting, etching, or scraping in metzotinto, in or upon any plate of copper, brass, steel, or of any other metal or mixture of metals, or upon wood, or any other material, or any plate whatsoever, any promissory note, inland bill, or bill of exchange, or blank promissory note, inland bill, or bill of exchange, or part of a promissory note, inland bill, or bill of exchange, containing the words "bank of Ireland," or "bank post bill," or any word or words expressing the sum or amount, or any part of the sum or amount of such promissory note, inland bill, or bill of exchange, in white letters or figures, on a black or dark ground, or any notice or advertisement from any shop-keeper or other person, with flourishes or devices in the margin, or any number thereon in white letters or figures, on a black or dark ground, or shall use any such plate so engraved, cut, etched, or scraped in metzotinto, or shall use any other instrument for the making or printing any such promissory note, inland bill, bill of exchange, or blank promissory note, inland bill, or bill of exchange, or notice or advertisement; and if any person, without being authorized and appointed as aforesaid, shall, after the first day of June, (1797,) knowingly have in his, her, or their custody, any such plate or instrument, or shall knowingly and wilfully utter or publish any such promissory note, inland bill, or bill of exchange, blank promissory note, inland bill, or bill of exchange, or utter or disperse any such notice or advertisement; every such person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be fined in any sum not exceeding fifty pounds, or be committed to the common gaol of the county or place where the offence shall be committed, for any space of time not exceeding six months.

37 G. 3, c. 26.

Punishment.

3. Provided always, and it is hereby enacted, that nothing herein contained shall extend, or be construed to extend to any person or persons, who, being at any time hereafter possessed of any such note or bill, shall only utter the same, by carrying the same for payment to the issuer or issuers, drawer or drawers, acceptor or acceptors, indorser or indorsers thereof, respectively, or using proper means to compel the payment of any such note or bill.

Not to extend to persons who shall utter such notes, &c., only by compelling payment from the issuers.

(a) The authorized persons referred to are, "the officers, workmen, servants, or agents for the time being of the governor and company, authorized and appointed for that purpose by the said governor and company, and for the use of the said governor and company only."—s. 1.

38 G. 3, c. 53.

Forging bank
of Ireland
notes or bills;
felony.

38 Geo. 3, c. 53, s. 2.—That if any person shall forge, counterfeit, or alter, or cause or procure to be forged, counterfeited, or altered, or act or assist in the forging, counterfeiting, or altering any bank note of the governor and company of the bank of Ireland, or any endorsement of any bank note of the said governor and company of the bank of Ireland, or any endorsement of any bank note of the said governor and company, or any bank bill of exchange of the said governor and company, or acceptance or endorsement of any bank bill of exchange of the said governor and company, or any bank post bill of the said governor and company, or acceptance or endorsement of any bank post bill of the said governor and company; or shall alter, or cause or procure to be altered, or act or assist in the altering the number or principal sum, or any other part of any such bank note, bank bill of exchange, or bank post bill, with intention to defraud the said governor and company, or their successors, or to defraud any person or persons whomsoever, or with any fraudulent intention whatsoever; or shall offer, or dispose of, or put away any forged, counterfeited, or altered bank note of the said governor and company, or any forged, counterfeited, or altered endorsement of any bank note of the said governor and company, or any forged, counterfeited, or altered bank bill of exchange of the said governor and company, or any forged, counterfeited, or altered endorsement of any bank bill of exchange of the said governor and company, or any forged, counterfeited, or altered bank post bill of the said governor and company, or any forged, counterfeited, or altered endorsement of any bank post bill of the said governor and company, or any bank note, bank bill of exchange, or bank post bill of the said governor and company, in which the principal sum or number has been falsely altered; or shall demand the money in such bank note, bank bill of exchange, or bank post bill contained, or pretended to be due thereon, or any part thereof, of the said governor and company, or of any of their clerks, agents, officers, or servants, with intention to defraud the said governor and company, or their successors, or any other person or persons, or with any fraudulent intention whatsoever, knowing the same to be forged, counterfeited, or altered; or shall aid, abet, assist, hire, or command any other person or persons to commit any such offence as aforesaid; every such person so offending, shall be deemed a felon, and *suffer death without benefit of clergy.*

Unauthorized
persons hav-
ing or using
paper or
moulds, such
as used by the
bank of Ire-
land; felony.

3. That if any person other than an officer, workman, servant, or agent, for the time being, of the governor and company of the bank of Ireland, authorized and appointed for that purpose by the said governor and company, and for the use of the said governor and company only, shall make or use, or cause or procure to be made or used, or knowingly aid or assist in making or using, or, without being authorized and appointed as aforesaid, shall knowingly have in his, her, or their custody or pos-

session, without lawful excuse, the proof whereof shall be on the person accused, any frame, mould, or instrument for the making of paper, in the substance whereof would be visible the words, "Bank of Ireland," or the greater part of such words, or is the substance whereof would be visible any device or distinction peculiar to and appearing in the substance of the paper used by the governor and company of the bank of Ireland, for notes and bills of exchange of the bank of Ireland; or shall make, or cause or procure to be made, or knowingly aid or assist in making any paper, in the substance of which the said words, "Bank of Ireland," or the greater part of such words, or any device or distinction peculiar to and appearing in the substance of the paper used by the said governor and company, for notes and bills of exchange of the bank of Ireland, shall be visible; or if any person, except as before excepted, shall knowingly have in his or her custody or possession, without lawful excuse, the proof whereof shall be on the person accused, any paper whatsoever, in the substance of which the words "Bank of Ireland," or the greater part of such words, or any device or distinction peculiar to, and appearing in the substance of paper used by the said governor and company of the bank of Ireland for notes or bills of exchange of the bank of Ireland, shall be visible; or if any person, except as before excepted, shall by any art, mystery, or contrivance, cause or procure, or knowingly aid or assist in causing or procuring the words "Bank of Ireland," or the greater part of such words, or any device or distinction peculiar to, and appearing in the substance of the paper used by the governor and company of the bank of Ireland, for notes or bills of exchange of the bank of Ireland, to appear in the substance of any paper whatsoever; every person so offending in any of the cases aforesaid, and being thereof lawfully convicted, shall for such offence be adjudged a felon, and shall be transported for the term of his or her life.

4. That if any person, other than an officer, workman, servant, or agent, for the time being, of the governor and company of the bank of Ireland, authorized and appointed for that purpose by the said governor and company, and for the use of the said governor and company only, shall make or use, or cause or procure to be made or used, or knowingly aid or assist in making or using, or, without being authorized and appointed as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse, the proof whereof shall be on the person accused, any plate, or instrument of metal or wood, or of any other materials whatsoever, in or upon which there shall be, or be made or impressed, or which would make or impress the form of words, or any part of the form of words imprinted or impressed on, or used in any notes or bills of exchange of the governor and company of the bank of Ireland, or any stamp or instrument of metal or wood, or of any other materials whatsoever, upon which there shall be, or be made or impressed, or which

38 G. 3, c. 53.

Unauthorized persons making, having, or using any plate, &c., for impressing the words used on bank of Ireland notes; felony.

53. would make or impress any of the devices, distinctions, or flourishes, printed or engrossed on any notes or bills of exchange of the said governor and company of the bank of Ireland; every person so offending in any of the cases aforesaid, and being thereof lawfully convicted, shall for such offence be adjudged a felon, and shall be transported for the term of his or her life.

6. That, upon oath being made before any justice of the peace by one credible person, that there is just cause to suspect that any one or more person or persons hath or have been concerned in forging or counterfeiting any notes or bills of the governor and company of the bank of Ireland, or in making or engraving any frame, mould, or instrument for making paper, in imitation of the paper used in notes or bills of the governor and company of the bank of Ireland, or in making such paper, or in engraving or cutting any plate or plates of metal or wood, or other materials, upon which should be, or be made or impressed, or which would make or impress as aforesaid, the form of words printed on, or used in any notes or bills of the governor and company of the bank of Ireland, or any part of such form, in engraving or cutting any stamp or instrument, on which should be, or be made, or impressed, or which would make or impress any of the devices, distinctions, or flourishes printed or engraved on the notes, and bills of exchange, of the governor and company of the bank of Ireland; or, upon oath being made before such justice as aforesaid, that there is reason to suspect that any of the hereinbefore mentioned tools or instruments, or that any paper made in imitation of the paper used by the governor and company of the bank of Ireland, as aforesaid, are knowingly concealed or secreted by any person or persons; then, and in all such cases, it may be lawful for such justice, or any person or persons empowered by warrant under his hand and seal, to search the dwelling-house, room, workshop, out-house, yard, garden, or other place belonging to such suspected person or persons, for such forged notes or bills, frame, mould, or instrument, paper, plate, or plates; and if any such be found in any place so searched, or be found in the custody or possession of any person or persons, not then employed by the governor and company of the bank, nor having the same by some lawful authority; then, it shall and may be lawful for any person or persons discovering the same, to seize, and he and they are hereby authorized and required to seize the same, and to carry them forthwith to some justice of the peace of the county, city, or place where the same shall be seized, and shall cause the same to be so secured, that the same shall be forthcoming, to be produced in evidence against such person or persons as shall or may be prosecuted for any of the offences aforesaid; and after such time as such forged note or notes, or of any such frame, mould, or instrument, paper, plate, or plates, or any of them shall have been produced in evidence, as well the same so produced, as the others so seized, and not made use of in evidence, and every of them shall forth-

order of the court, where such offender or offenders shall or by order of such, or some other justice of the peace, there be no such trial, be defaced and destroyed, or be disposed of, as such court, or such justice shall

33 G. 3, c. 53.

v. 3, c. 13, s. 2.—That if any person or persons, in that be United Kingdom called Ireland, shall, from and after the expiration of ten days after the day of passing of this act, or receive from any other person or persons any forged or counterfeit bank note, bank bill of exchange, bank post bill, bank note, blank bank bill of exchange, or blank bank bill, of the governor and company of the bank of Ireland, the same to be forged or counterfeited; or shall knowingly have in his, her, or their possession or custody, or in his, her, or their dwelling-house, out-house, lodgings, or premises, any forged or counterfeited bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill of the said governor and company, knowing the same to be forged or counterfeited, without excuse, the proof whereof shall lie upon the person accused, every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be imprisoned for the term of fourteen years.

Knowingly receiving or having forged bank of Ireland notes; felony.

v. 3, c. 57, s. 1.—Whereas it is expedient to prevent the use of forgery in all parts of the United Kingdom of Great Britain and Ireland; be it therefore enacted &c., that if any person or persons, in any part of the United Kingdom of Great Britain and Ireland, from and after the tenth day of July, shall make, or cause or procure to be made, or know, or assist in the making or using of any frame or part of any frame or mould, for the making of paper, on which the name or firm appearing visible in the substance of the paper, or any person or persons, body corporate, or other banking company or partnership, carrying on the business of banking, without an authority in writing for that purpose from some person or persons, body corporate, or other banking company or partnership, or from some person or persons duly authorized to give such authority; or shall manufacture, make, vend, or sell, or sale, publish or dispose of, or cause or procure to be made, or sold, or made, vended, or exposed to sale, published or sold, or of, any paper having the name or firm appearing in the substance of the paper, of any person or persons, body corporate, or other banking company or partnership, carrying on the business of bankers; or if any person or persons, without such authority, shall, by any art, means, or contrivance, cause or procure, or shall knowingly assist in causing or procuring the name or firm of any person or persons, body corporate, or other banking company or partnership carrying on the business of bankers, to appear in the substance of the paper whereon the same shall be

Making, vending, or using paper with the name of any banker appearing in the substance of it, without authority.

strokes or other delineation of any subscription traced thereon, subjoined to any bill of exchange, promissory note, or other note for the payment of money, purporting to be the bill of exchange and promissory note, or other note for the payment of money, of any person or persons, body corporate, or other banking company or partnership, carrying on the business of bankers, and to be payable to the bearer on demand, and shall not be able to prove that such plate came into his, her, or their possession without his, her, or their knowledge or consent; every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall for the first offence be imprisoned for any time not exceeding three years nor less than twelve months, and for the second offence be transported to any of his Majesty's colonies or plantations, for the term of seven years.

41 G. 3, c. 57

Punishment.

39 Geo. 3, c. 63, s. 2.— That if any person shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered, or act, aid or assist in the falsely making, forging, counterfeiting or altering any bank note of the governor and company of the bank of England, or any assignment or endorsement of any bank note of the said governor and company, or any bank bill of exchange of the said governor and company, or any acceptance of any assignment or endorsement of any bank bill of exchange of the said governor and company, or any bank post bill of the said governor and company, or any acceptance or any assignment or endorsement of any bank post bill of the said governor and company; or shall alter, or cause to procure to be altered, or act, aid, or assist in the altering the number or principal sum, or any other part of any such bank note, bank bill of exchange, or bank post bill, whether such bank note shall be assigned or endorsed or not, or whether such bank bill of exchange or bank post bill shall be accepted, or assigned, or endorsed or not, with intention to defraud the said governor and company, or their successors, or to defraud any person or persons, or any body or bodies politic or corporate whomsoever, or with any fraudulent intention whatsoever; or shall offer, or dispose of, or put away any false made, forged, counterfeited, or altered bank note of the said governor and company, or any false made, forged, counterfeited, or altered assignment and endorsement of any bank note of the said governor and company, or any false made, forged, counterfeited, or altered bank bill of exchange of the said governor and company, or any false made, forged, counterfeited, or altered assignment or endorsement of any bank bill of exchange of the said governor and company, or any false made, forged, counterfeited, or altered bank post bill of the said governor and company, or any false made, forged, counterfeited, or altered assignment or endorsement of any bank post bill of the said governor and company, in which the principal sum or number, or any other part of any such bank note, or

Forging or altering bank of England note or bills, or knowingly uttering such; felony.

19 G. 3, c. 63.

any assignment or endorsement thereof, or in which the principal sum or number, or any other part of any such bank bill of exchange, or bank post bill, or any acceptance, assignment, or endorsement thereof, has been falsely altered, with intention to defraud the said governor and company, or their successors, or any other person or persons, or any body or bodies politic or corporate, or with any fraudulent intention whatsoever, knowing the same to be false made, forged, counterfeited, or altered; or shall act in, aid, abet, assist, hire, or command, or procure, or persuade, or endeavour to procure or persuade any person or persons to commit any such offence as aforesaid; every such person so offending, shall be deemed a felon, *and suffer death without benefit of clergy.*

Making, using, or having paper, in imitation of bank of England paper, without authority; felony.

3. That if any person, other than an officer, workman, servant, or agent for the time being, of the governor and company of the bank of England, authorized and appointed for that purpose by the said governor and company, and for the use of the said governor and company, and their successors only, shall make or use, or cause or procure to be made or used, or knowingly act, aid, or assist in making or using, or, without being authorized and appointed as aforesaid, shall knowingly have in his, her, or their custody or possession, or in his, her, or their house or out-house, dwelling-place, lodgings, or apartments, without lawful excuse, the proof whereof shall lie on the person accused, any frame, mould, or instrument for making of paper, with the words, "Bank of England," or with the greater part of such words visible in or upon the substance of such frame, mould, or instrument, or in or upon the substance of any of which shall be visible, any device or distinction peculiar to, and appearing in the substance of the paper used, or to be used by the governor and company of the bank of England, for notes or bills of exchange, or bank post bills of the bank of England; or shall make, or cause or procure to be made, or knowingly act, aid, or assist in making, or causing or procuring to be made, any paper in the substance of which the said words, "Bank of England," or the greater part of such words, or any device or distinction peculiar to, and appearing in the substance of the paper used or to be used by the said governor and company for the time being, for notes or bills of exchange, or bank post bills of the bank of England, shall be visible; or if any person, except as before excepted, shall knowingly have in his or her custody or possession, or in his, her, or their house, out-house, dwelling-place, lodgings, or apartments, without lawful excuse, the proof whereof shall lie on the person accused, any paper whatsoever, in the substance of which the words, "Bank of England," or the greater part of such words, or any device or distinction peculiar to, and appearing in the substance of the paper used or to be used by the said governor and company of the bank of England for the time being, for notes or bills of exchange, or bank post bills of the bank of England, shall be visible; or if any person, except as before excepted, shall by any

ing thereof lawfully convicted, shall, for every such offence adjudged a felon, and shall be transported for the term of her life.

That if any person other than an officer, workman, servant or agent for the time being, of the governor and company of Bank of England, authorized and appointed for that purpose by the said governor and company, and for the use of the governor and company, and their successors only, shall make or cause or procure to be made or used, or knowingly, or assist in making or using, or procuring to be made, or, without being authorized and appointed as aforesaid, knowingly have in his or their custody or possession, out-house, dwelling-place, lodgings, or apartments, without lawful excuse, the proof whereof shall lie on the person charged, any plate or instrument of metal or wood, or of any materials whatsoever, in or upon which there shall be, or shall be made or impressed, or which would make or impress the form of words, or any part of the form of words imprinted or printed upon, or used or to be used in any notes or bills of exchange, or bank post bills of the governor and company of the Bank of England, or any stamp or instrument of metal or wood, or any other materials whatsoever, upon which there shall be, or shall be made or impressed, or which would make or impress any devices, distinctions, or flourishes, printed or engraved, or printed or engraved upon or in any notes, or bills of exchange, or bank post bills of the said governor and company of Bank of England; every person so offending in any of the things aforesaid, and being thereof lawfully convicted, shall, for every such offence, be adjudged a felon, and shall be transported for the term of his or her life.

That if any person shall have in his or her possession or

Making, using, or having any plate for impressing devices used on bank of England notes, felony.

Having

63. person so offending, and being thereof convicted, shall be punished by fine and imprisonment, pillory, or other corporal punishment, according to the discretion of the court, before whom he or she shall be prosecuted for such offence; and if the same person shall afterwards be convicted a second time of the like offence of having in his or her possession or custody, house, out-house, dwelling-place, lodgings or apartments, any forged or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bills of the governor and company of the bank of England, or any forged or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bill, purporting to be the note or notes, bill or bills of exchange, or bank post bill or bank post bills of the governor and company of the bank of England, knowing the same to be forged or counterfeited, with an intent to utter and negotiate the same as true and genuine note or notes, bill or bills of exchange, bank post bill or bank post bills of the governor and company of the bank of England, as aforesaid; every such person shall, for every such second offence, be adjudged a felon, and shall be transported for his or her life.

y 6. That upon oath being made before any justice of the peace, by one credible person, that there is just cause to suspect that any one or more person or persons hath or have been concerned in the false making, forging, or counterfeiting any note or notes, or bill or bills of exchange, or bank post bill or bank post bills of the governor and company of the bank of England, or in offering, disposing of, or putting away any false made, forged, or counterfeited note or notes, bill or bills of exchange, or bank post bill, or bank post bills of the said governor and company, or any false made, forged, or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bills, purporting to be the note or notes, bill or bills of exchange, or bank post bill, or bank post bills of the said governor and company, or in making or using any frame, mould, or instrument, or making paper in imitation of the paper used or to be used in notes or bills of the governor and company of the bank of England, or in making such paper, or in engraving, or cutting any plate or plates of metal, or wood, or other materials, upon which shall be or be made or impressed, or which would make or impress as aforesaid, the form of words printed on or used, or to be printed or used, in any notes or bills of the governor and company of the bank of England, or any part of such form, or in engraving or cutting any stamp or instrument upon which shall be, or be made or impressed, or which would make or impress any of the devices, distinctions, or flourishes, printed or engraved, or to be printed or engraved on the notes and bills of exchange, or bank post bills of the governor and company of the bank of England; or, upon oath being made before such justice as aforesaid, that there is reason to suspect that any of the hereinbefore mentioned tools or instruments, or that any paper made in imitation of the paper used, or to be

ed by the governor and company of the bank of England as aforesaid, are knowingly concealed or secreted by any person or persons; then, and in all such cases, it may be lawful for such justice, or any person or persons empowered by warrant under his hand and seal, to search the person, clothes, furniture, dwelling-house, room, work-shop, outhouse, yard, garden, or other place belonging to such suspected person or persons, or wherein they shall have resided, worked, lodged, used, lived, or have had access to, for such forged notes or bills, frame, mould, or instrument, paper, plate or plates; and if any such be found in any place so searched, or be found in the custody or possession of any person or persons not then employed by the governor and company of the bank of England, nor having the same by some lawful authority; then it shall and may be lawful for any person or persons discovering the same, to seize, and he and they are hereby authorized and required to seize the same, and to carry them forthwith to some justice of the peace of the county, city, or place where the same shall be seized; and shall cause the same to be so secured, that the same shall be forthcoming, to be produced in evidence against such person or persons as shall or may be prosecuted for any of the offences aforesaid; and after such time as such forged note or notes, bill or bills, or any such frame, mould, or instrument, paper, plate or plates, or any of them, shall have been produced in evidence, as well the same so produced as the other so seized and not made use of in evidence, and every of them, shall forthwith, by order of the court where such offender or offenders shall be tried, or by order of such or some other justice of the peace, in case there be no such trial, be defaced and destroyed, or otherwise disposed of as such court or such justice shall direct.

7. That if any person shall be convicted of having in his or her possession or custody, any false made, forged, or counterfeited note or notes, bill or bills of exchange, bank post bill or bank post bills of the governor and company of the bank of England, or any false made, forged, and counterfeited note or notes, bill or bills of exchange, bank post bill or bank post bills, purporting to be the note or notes, bill or bills of exchange, bank post bill or bank post bills of the governor and company of the bank of England, knowing the same to be forged and counterfeited, with an intent to utter or negotiate the same, as the true and genuine note or notes, bill or bills of exchange, bank post bill, or bank post bills of the governor and company of the bank of England, and shall afterwards be convicted of the like offence in any other county or city; the clerk of the crown or clerk of the peace, or their respective deputy for the county or city where such first conviction was so had, shall, at the request of the prosecutor or any other on his majesty's behalf, certify the same under his hand and seal, by transcript in a few words, containing the effect and tenor of such conviction, for which certificate thirteen shillings and four-pence, and no more, shall be paid;

39 G. 3, c. 68.

Upon second conviction for forgery of bank of England notes, the clerk of the crown &c., shall certify first conviction by transcript.

33 G. 3, c. 63.

Bank of Eng-
land to be
deemed a bo-
dy corporate.

and such certificate, being produced in court, shall be sufficient proof of such former conviction.

8. That the governor and company of the bank of England for the time being, shall, upon all trials of any action, suit, bill, plaint, information, or indictment, in this kingdom, be deemed and taken to be an existing corporation or body corporate, to all intents and purposes, and that this act shall be deemed and taken to be a public act.

1 Geo. 4, c. 92. Whereas the forgery of bank notes hath, of late, very much increased in this kingdom; and as well for the prevention thereof, as to facilitate the detection of the same, the governor and company of the bank of England have, after great consideration, labour, and expense, formed a new plan for printing bank notes, in which the groundwork of each bank note will be black or coloured, or black and coloured line work, and the words "Bank of England" will be placed at the top of each bank note, in white letters upon a black, sable, or dark ground, such ground containing white lines intersecting each other, and the numerical amount or sum of each bank note in the body of the note will be printed in black and red register work, and the back of each note will distinctly show the whole contents thereof, except the number and date in a reversed impression: therefore, for the better prevention of the forgery of bank notes, and for the security of the public, be it enacted &c., that from and after the passing of this act, if any person or persons, other than the officers, workmen, servants, and agents for the time being of the said governor and company, to be authorized and appointed for that purpose by the said governor and company, and for the use of the said governor and company only, shall engrave, cut, etch, scrape, or by any other art, means, or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means, or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means, or device, making in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixtures of metal, or upon wood or other materials, or any plate whatsoever, for the purpose of producing a print or impression of all or any part or parts of a bank note, or of a blank bank note of the said governor and company, of the description aforesaid, without an authority in writing from the said governor and company; or shall use any such plate so engraved, cut, etched, scraped, or by any other art, means, or device made; or shall use any other instrument or contrivance for the making or printing any such bank note or blank bank note, or part of a bank note of the description aforesaid; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly, and without lawful excuse, have in his, her, or their custody any such plate or instrument, or, without such authority as aforesaid, shall knowingly or wilfully utter, publish, dispose of, or put away any such blank bank note, or part of such bank


Engraving,
using, or hav-
any plate
producing a
print of any
part of a bank
of England
note, without
authority;
felony.

of the description aforesaid; every person so offending in any of the cases aforesaid, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

2. And whereas divers frauds have been practised by making and publishing papers with certain words and characters, so nearly resembling the notes of the governor and company of the bank of England, as to appear to ignorant and unwary persons to be the notes of the said governor and company; and it is necessary for the security of the public, that such practices as applied to the notes of the said governor and company, of the description aforesaid, should be prevented; be it therefore further enacted, that if any person or persons, from and after the passing of this act, shall engrave, cut, etch, scrape, or by any other art, means, or device make; or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means, or contrivance made; or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means or contrivance making, in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixture of metals, or upon wood, or any other materials, or upon any plate whatsoever, any line work, as or for the groundwork of a promissory note or bill of exchange, the impression taken from which line work shall be intended to resemble the groundwork of a bank note of the said governor and company of the description aforesaid, or any device, the impression taken from which shall contain the words "Bank of England" in white letters, upon a black, sable or dark ground, either with or without white or other lines therein, or shall contain, in any part thereof, the numerical sum or amount of any promissory note, or bill of exchange, in black and red register work, or shall show the reversed contents of a promissory note or bill of exchange, or of any part of a promissory note or bill of exchange, or shall contain any word or words, figure or figures, character or characters, pattern or patterns, which shall be intended to resemble the whole, or any part of the matter or ornaments of any bank note of the description aforesaid; or shall contain any word, number, figure or character, in white on a black, sable, or dark ground, either with or without white or other lines therein, which shall be intended to resemble the numerical sum or amount in the margin, or any other part of any bank note of the said governor and company, without an authority in writing for that purpose from the said governor and company, to be produced and proved by the party accused; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, use any such plate, wood, or other material so engraved, cut, etched, scraped, or by any other art, means or contrivance made, or shall use any other instrument or contrivance for the making or printing upon any paper or other material, any word or words, figure or figures, character or characters, pattern or patterns, which shall be intended to re-

1 G. 4, c. 9

Engraving &c., on any plate, any resemblance of groundwork like that of a bank of England note, without authority, or having or using such plate, or uttering any impression from it; felony.

38 G. 3, c. 53.  would make or impress any of the devices, distinctions, printed or engrossed on any notes or bills of the said governor and company of the bank of Ireland, person so offending in any of the cases aforesaid, thereof lawfully convicted, shall for such offence be felon, and shall be transported for the term of his or her

Justices may grant warrants to search for forged notes, plates, &c.

6. That, upon oath being made before any justice of the peace by one credible person, that there is just cause that any one or more person or persons hath or have concerned in forging or counterfeiting any notes or bills of the governor and company of the bank of Ireland, or in making any frame, mould, or instrument for making paper or imitation of the paper used in notes or bills of the governor and company of the bank of Ireland, or in making such paper, or in engraving or cutting any plate or plates of metal or of other materials, upon which should be, or be made or used, or which would make or impress as aforesaid, the form printed on, or used in any notes or bills of the governor and company of the bank of Ireland, or any part of such paper, or in engraving or cutting any stamp or instrument, on which should be, or be made, or impressed, or which would make any of the devices, distinctions, or flourishes printed on the notes, and bills of exchange, of the governor and company of the bank of Ireland; or, upon oath being made before any justice as aforesaid, that there is reason to suspect that any of the hereinbefore mentioned tools or instruments, or that any paper or imitation of the paper used by the governor and company of the bank of Ireland, as aforesaid, are knowingly kept, or secreted by any person or persons; then, and in all such cases, it may be lawful for such justice, or any person or persons authorized and empowered by warrant under his hand and seal, to search any dwelling-house, room, workshop, out-house, yard, garden, or place belonging to such suspected person or persons, for any forged notes or bills, frame, mould, or instrument, paper, or plates; and if any such be found in any place, or be found in the custody or possession of any person or persons, not then employed by the governor and company of the bank, nor having the same by some lawful authority, it shall and may be lawful for any person or persons authorized by the same, to seize, and he and they are hereby authorized and required to seize the same, and to carry them forthwith before any justice of the peace of the county, city, or place where the same shall be seized, and shall cause the same to be so seized, and the same shall be forthcoming, to be produced in evidence against such person or persons as shall or may be prosecuted of the offences aforesaid; and after such time as shall be appointed by the court, note or notes, or of any such frame, mould, or instrument, paper, plate, or plates, or any of them shall have been produced in evidence, as well the same so produced, as the others not so produced, and not made use of in evidence, and every of them

with, by order of the court, where such offender or offenders shall be tried, or by order of such, or some other justice of the peace, in case there be no such trial, be defaced and destroyed, or otherwise disposed of, as such court, or such justice shall direct. 33 G. 3, c. 53.

49 Geo. 3, c. 13, s. 2.—That if any person or persons, in that part of the United Kingdom called Ireland, shall, from and after the expiration of ten days after the day of passing of this act, purchase or receive from any other person or persons any forged or counterfeited bank note, bank bill of exchange, bank post bill, or blank bank note, blank bank bill of exchange, or blank bank bill, of the governor and company of the bank of Ireland, knowing the same to be forged or counterfeited; or shall knowingly or wittingly have in his, her, or their possession or custody, or in his, her, or their dwelling-house, out-house, lodgings, or apartments, any forged or counterfeited bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill of the said governor and company, knowing the same to be forged or counterfeited, without lawful excuse, the proof whereof shall lie upon the person accused; every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

Knowingly receiving or having forged bank of Ireland notes; felony.

41 Geo. 3, c. 57, s. 1.—Whereas it is expedient to prevent the crime of forgery in all parts of the United Kingdom of Great Britain and Ireland; be it therefore enacted &c., that if any person or persons, in any part of the United Kingdom of Great Britain and Ireland, from and after the tenth day of July, 1801, shall make, or cause or procure to be made, or knowingly aid or assist in the making or using of any frame or mould, or part of any frame or mould, for the making of paper, with the name or firm appearing visible in the substance of the paper, of any person or persons, body corporate, or other banking company or partnership, carrying on the business of bankers, without an authority in writing for that purpose from some person or persons, body corporate, or other banking company or partnership, or from some person or persons duly authorized to give such authority; or shall manufacture, make, vend, or expose to sale, publish or dispose of, or cause or procure to be manufactured, made, vended, or exposed to sale, published or disposed of, any paper having the name or firm appearing visible in the substance of the paper, of any person or persons, body corporate, or other banking company or partnership whatever, carrying on the business of bankers; or if any person or persons, without such authority, shall, by any art, means, contrivance, or contrivance, cause or procure, or shall knowingly or assist in causing or procuring the name or firm of any person or persons, body corporate, or other banking company or partnership carrying on the business of bankers, to appear visible in the substance of the paper whereon the same shall be

Making, vending, or using paper with the name of any banker appearing in the substance of it, without authority.

41 G. 3, c. 57. written or printed ; every person or persons so offend-
 of the cases aforesaid, and being convicted thereof a
 Punishment. law, shall, for the first offence, be imprisoned for a
 exceeding two years, nor less than six months, and for
 offence, be transported to any of his majesty's colonie
 tions for the term of seven years.

Engraving
 any bill of ex-
 change or
 bank note, or
 having any
 such plate,
 &c., or utter-
 ing such bill,
 &c., without
 authority.

2. That if any person or persons, in any part of
 Kingdom of Great Britain and Ireland, from and a
 tenth day of July, (1801,) shall engrave, cut, etch, a
 any other means or device make, or shall cause or pr
 engraved, cut, etched, scraped, or by any other mean
 made, or shall knowingly aid or assist in the engravi
 etching, scraping, or by any other means or device
 or upon any plate whatsoever, any bill of exchange,
 note, or other note for the payment of money, or
 bill of exchange, promissory note, or other note for t
 of money, purporting to be the bill of exchange, prom
 or other note for the payment of money, of any per
 sons, body corporate, banking company or partners
 on the business of bankers, without an authority in
 that purpose from such person or persons, body corp
 ing company or partnership, or some person or pers
 thorized to give such authority ; or shall use any st
 engraved, cut, etched, scraped, or by any other mea
 made, or shall use any other device for the making
 any such bill of exchange, promissory note, or other
 payment of money, without such authority in writin
 said ; or if any person or persons shall, after the 28
 of July, (1801,) without such authority as aforesaid
 have in his, her, or their custody, any such plate or
 shall, without such authority as aforesaid, knowing
 fully publish, dispose of, or put away any such bill
 promissory note, or other note for the payment of m
 of such bill of exchange, promissory note, or other
 payment of money ; every person so offending in
 cases aforesaid, and being convicted thereof accor
 shall for the first offence be imprisoned for any t
 ceeding two years nor less than six months, and for
 offence be transported to any of his majesty's colonie
 tions for the term of seven years.

Punishment.

Engraving,
 &c., the sub-
 scription to
 any bank
 note, &c., or
 having such
 plate.

3. That if any person or persons in any part o
 Kingdom of Great Britain and Ireland, from and af
 day of July, (1801,) shall engrave, cut, or etch, or
 means or contrivance trace with a hair stroke or o
 delineation, on any plate whatsoever, any of the
 subjoined to any bill of exchange, promissory note,
 for the payment of money, of any person or persons,
 rate, or other banking company or partnership ca
 business of bankers, to be payable to bearer on dem
 have in his, her, or their possession, any plate w

strokes or other delineation of any subscription traced thereon, and to any bill of exchange, promissory note, or other note for the payment of money, purporting to be the bill of exchange and promissory note, or other note for the payment of money, of any person or persons, body corporate, or other banking company or partnership, carrying on the business of bankers, and to be payable to the bearer on demand, and shall not be able to prove that such plate came into his, her, or their possession without his, her, or their knowledge or consent; every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall for the first offence be imprisoned for any time not exceeding three years nor less than twelve months, and for the second offence be transported to any of his Majesty's colonies or plantations, for the term of seven years.

41 G. 3, c. 57.

Punishment.

41 Geo. 3, c. 63, s. 2.— That if any person shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered, or act, aid or assist in the falsely making, forging, counterfeiting or altering any bank note of the governor and company of the bank of England, or any assignment or endorsement of any bank note of the said governor and company, or any bank bill of exchange of the said governor and company, or any acceptance of any assignment or endorsement of any bank bill of exchange of the said governor and company, or any bank post bill of the said governor and company, or any acceptance or any assignment or endorsement of any bank post bill of the said governor and company; or shall alter, or cause to procure to be altered, or act, aid, or assist in the altering the number or principal sum, or any other part of any such bank note, bank bill of exchange, or bank post bill, whether such bank note shall be assigned or endorsed or not, or whether such bank bill of exchange or bank post bill shall be accepted, or assigned, or endorsed or not, with intention to defraud the said governor and company, or their successors, or to defraud any person or persons, or any body or bodies politic or corporate whomsoever, or with any fraudulent intention whatever; or shall offer, or dispose of, or put away any false made, forged, counterfeited, or altered bank note of the said governor and company, or any false made, forged, counterfeited, or altered assignment and endorsement of any bank note of the said governor and company, or any false made, forged, counterfeited, or altered bank bill of exchange of the said governor and company, or any false made, forged, counterfeited, or altered assignment or endorsement of any bank bill of exchange of the said governor and company, or any false made, forged, counterfeited, or altered bank post bill of the said governor and company, or any false made, forged, counterfeited, or altered assignment or endorsement of any bank post bill of the said governor and company, or any bank note, bank bill of exchange, or bank bill of the said governor and company, in which the principal sum or number, or any other part of any such bank note, or

Forging or altering bank of England notes or bills, or knowingly uttering such; felony.

39 G. 3, c. 63.



Making, using, or having paper, in imitation of bank of England paper, without authority; felony.

any assignment or endorsement thereof, or in which the principal sum or number, or any other part of any such bank bill of exchange, or bank post bill, or any acceptance, assignment, or endorsement thereof, has been falsely altered, with intention to defraud the said governor and company, or their successors, or any other person or persons, or any body or bodies politic or corporate, or with any fraudulent intention whatsoever, knowing the same to be false made, forged, counterfeited, or altered; or shall act in, aid, abet, assist, hire, or command, or procure, or persuade, or endeavour to procure or persuade any person or persons to commit any such offence as aforesaid; every such person so offending, shall be deemed a felon, *and suffer death without benefit of clergy.*

3. That if any person, other than an officer, workman, servant, or agent for the time being, of the governor and company of the bank of England, authorized and appointed for that purpose by the said governor and company, and for the use of the said governor and company, and their successors only, shall make or use, or cause or procure to be made or used, or knowingly act, aid, or assist in making or using, or, without being authorized and appointed as aforesaid, shall knowingly have in his, her, or their custody or possession, or in his, her, or their house or out-house, dwelling-place, lodgings, or apartments, without lawful excuse, the proof whereof shall lie on the person accused, any frame, mould, or instrument for making of paper, with the words, "Bank of England," or with the greater part of such words visible in or upon the substance of such frame, mould, or instrument, or in or upon the substance of any of which shall be visible, any device or distinction peculiar to, and appearing in the substance of the paper used, or to be used by the governor and company of the bank of England, for notes or bills of exchange, or bank post bills of the bank of England; or shall make, or cause or procure to be made, or knowingly act, aid, or assist in making, or causing or procuring to be made, any paper in the substance of which the said words, "Bank of England," or the greater part of such words, or any device or distinction peculiar to, and appearing in the substance of the paper used or to be used by the said governor and company for the time being, for notes or bills of exchange, or bank post bills of the bank of England, shall be visible; or if any person except as before excepted, shall knowingly have in his or her custody or possession, or in his, her, or their house, out-house, dwelling-place, lodgings, or apartments, without lawful excuse the proof whereof shall lie on the person accused, any paper whatsoever, in the substance of which the words, "Bank of England," or the greater part of such words, or any device or distinction peculiar to, and appearing in the substance of the paper used or to be used by the said governor and company of the bank of England for the time being, for notes or bills of exchange, or bank post bills of the bank of England, shall be visible; or if any person, except as before excepted, shall by an

act, mystery, or contrivance, cause or procure, or knowingly act, aid, or assist in causing or procuring the words "Bank of England;" or the greater part of such words, or any device or distinction peculiar to, and appearing in the substance of the paper used, or to be used by the governor and company of the Bank of England, for notes or bills of exchange, or bank post bills of the bank of England, to appear in the substance of any paper whatsoever; every person so offending in any of the cases aforesaid, and being thereof lawfully convicted, shall, for every such offence, be adjudged a felon, and shall be transported for the term of his or her life.

39 G. 3, c. 63.

4. That if any person other than an officer, workman, servant, or agent for the time being, of the governor and company of the bank of England, authorized and appointed for that purpose by the said governor and company, and for the use of the said governor and company, and their successors only, shall make or use, or cause or procure to be made or used, or knowingly act, aid, or assist in making or using, or procuring to be made or used, or, without being authorized and appointed as aforesaid, shall knowingly have in his or their custody or possession, house, out-house, dwelling-place, lodgings, or apartments, without lawful excuse, the proof whereof shall lie on the person accused, any plate or instrument of metal or wood, or of any other materials whatsoever, in or upon which there shall be, or be made or impressed, or which would make or impress the form of words, or any part of the form of words imprinted or impressed upon, or used or to be used in any notes or bills of exchange, or bank post bills of the governor and company of the bank of England, or any stamp or instrument of metal or wood, or of any other materials whatsoever, upon which there shall be, or be made or impressed, or which would make or impress any of the devices, distinctions, or flourishes, printed or engraved, or to be printed or engraved upon or in any notes, or bills of exchange, or bank post bills of the said governor and company of the bank of England; every person so offending in any of the cases aforesaid, and being thereof lawfully convicted, shall, for every such offence, be adjudged a felon, and shall be transported for the term of his or her life.

Making, using, or having any plate for impressing devices used on bank of England notes; felony.

5. That if any person shall have in his or her possession or custody, house, out-house, dwelling-place, lodgings or apartments, any forged or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bills, or any forged or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bills, purporting to be the note or notes, bill or bills of exchange, or bank post bill, or bank post bills, of the governor and company of the bank of England, knowing the same to be forged or counterfeited, with an intent to utter or negotiate the same as the true and genuine note or notes, bill or bills of exchange, bank post bill, or bank post bills of the governor and company of the bank of England; every such

Having forged bank of England notes, with intent to utter them.

39 G. 2, c. 63.

Second of-
fence.

person so offending, and being thereof convicted, shall be punished by fine and imprisonment, pillory, or other corporal punishment, according to the discretion of the court, before whom he or she shall be prosecuted for such offence; and if the same person shall afterwards be convicted a second time of the like offence of having in his or her possession or custody, house, out-house, dwelling-place, lodgings or apartments, any forged or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bills of the governor and company of the bank of England, or any forged or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bills, purporting to be the note or notes, bill or bills of exchange, or bank post bill or bank post bills of the governor and company of the bank of England, knowing the same to be forged or counterfeited, with an intent to utter and negotiate the same as true and genuine note or notes, bill or bills of exchange, bank post bill or bank post bills of the governor and company of the bank of England, as aforesaid; every such person shall, for every such second offence, be adjudged a felon, and shall be transported for his or her life.

Justices may grant warrants to search the houses &c. of persons suspected to have forged notes, plates, frames for making paper &c.

6. That upon oath being made before any justice of the peace, by one credible person, that there is just cause to suspect that any one or more person or persons hath or have been concerned in the false making, forging, or counterfeiting any note or notes, or bill or bills of exchange, or bank post bill or bank post bills of the governor and company of the bank of England, or in offering, disposing of, or putting away any false made, forged, or counterfeited note or notes, bill or bills of exchange, or bank post bill, or bank post bills of the said governor and company, or any false made, forged, or counterfeited note or notes, bill or bills of exchange, bank post bill, or bank post bills, purporting to be the note or notes, bill or bills of exchange, or bank post bill, or bank post bills of the said governor and company, or in making or using any frame, mould, or instrument, or making paper in imitation of the paper used or to be used in notes or bills of the governor and company of the bank of England, or in making such paper, or in engraving, or cutting any plate or plates of metal, or wood, or other materials, upon which shall be or be made or impressed, or which would make or impress as aforesaid, the form of words printed on or used, or to be printed or used, in any notes or bills of the governor and company of the bank of England, or any part of such form, or in engraving or cutting any stamp or instrument upon which shall be, or be made or impressed, or which would make or impress any of the devices, distinctions, or flourishes, printed or engraved, or to be printed or engraved on the notes and bills of exchange, or bank post bills of the governor and company of the bank of England; or, upon oath being made before such justice as aforesaid, that there is reason to suspect that any of the hereinbefore mentioned tools or instruments, or that any paper made in imitation of the paper used, or to be

used by the governor and company of the bank of England as aforesaid, are knowingly concealed or secreted by any person or persons; then, and in all such cases, it may be lawful for such justice, or any person or persons empowered by warrant under his hand and seal, to search the person, clothes, furniture, dwelling-house, room, work-shop, outhouse, yard, garden, or other place belonging to such suspected person or persons, or wherein they shall have resided, worked, lodged, used, lived, or have had access to, for such forged notes or bills, frame, mould, or instrument, paper, plate or plates; and if any such be found in any place so searched, or be found in the custody or possession of any person or persons not then employed by the governor and company of the bank of England, nor having the same by some lawful authority; then it shall and may be lawful for any person or persons discovering the same, to seize, and he and they are hereby authorized and required to seize the same, and to carry them forthwith to some justice of the peace of the county, city, or place where the same shall be seized; and shall cause the same to be so secured, that the same shall be forthcoming, to be produced in evidence against such person or persons as shall or may be prosecuted for any of the offences aforesaid; and after such time as such forged note or notes, bill or bills, or any such frame, mould, or instrument, paper, plate or plates, or any of them, shall have been produced in evidence, as well the same so produced as the other so seized and not made use of in evidence, and every of them, shall forthwith, by order of the court where such offender or offenders shall be tried, or by order of such or some other justice of the peace, in case there be no such trial, be defaced and destroyed, or otherwise disposed of as such court or such justice shall direct.

7. That if any person shall be convicted of having in his or her possession or custody, any false made, forged, or counterfeited note or notes, bill or bills of exchange, bank post bill or bank post bills of the governor and company of the bank of England, or any false made, forged, and counterfeited note or notes, bill or bills of exchange, bank post bill or bank post bills, purporting to be the note or notes, bill or bills of exchange, bank post bill or bank post bills of the governor and company of the bank of England, knowing the same to be forged and counterfeited, with an intent to utter or negotiate the same, as the true and genuine note or notes, bill or bills of exchange, bank post bill, or bank post bills of the governor and company of the bank of England, and shall afterwards be convicted of the like offence in any other county or city; the clerk of the crown or clerk of the peace, or their respective deputy for the county or city where such first conviction was so had, shall, at the request of the prosecutor or any other on his majesty's behalf, certify the same under his hand and seal, by transcript in a few words, containing the effect and tenor of such conviction, for which certificate thirteen shillings and four-pence, and no more, shall be paid;

39 G. 3, c. 68.

Upon second conviction for forgery of bank of England notes, the clerk of the crown &c., shall certify first conviction by transcript.

39 G. 3, c. 63. and such certificate, being produced in court, shall be so proof of such former conviction.

Bank of England to be deemed a body corporate.

8. That the governor and company of the bank of England for the time being, shall, upon all trials of any action, suit, complaint, information, or indictment, in this kingdom, be taken to be an existing corporation or body corporate for all intents and purposes, and that this act shall be deemed an act to be a public act.

1 Geo. 4, c. 92. Whereas the forgery of bank notes is late, very much increased in this kingdom; and as well for the prevention thereof, as to facilitate the detection of the same, the governor and company of the bank of England have, after much consideration, labour, and expense, formed a new plan for issuing bank notes, in which the groundwork of each bank note shall be black or coloured, or black and coloured line work, and the words "Bank of England" will be placed at the top of each bank note, in white letters upon a black, sable, or dark ground, such ground containing white lines intersecting each other in such manner that the numerical amount or sum of each bank note in the note will be printed in black and red register work, and the back of each note will distinctly show the whole of the reverse thereof, except the number and date in a reversed impression; and therefore, for the better prevention of the forgery of bank notes, and for the security of the public, be it enacted &c., that from and after the passing of this act, if any person or persons, other than the officers, workmen, servants, and agents for the time being of the said governor and company, to be authorized and appointed for that purpose by the said governor and company, and without the use of the said governor and company only, shall engrave, cut, etch, scrape, or by any other art, means, or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means, or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means, or device, making in or upon any piece of copper, brass, steel, iron, pewter, or of any other metal, or upon any figures of metal, or upon wood or other materials, or upon any paper whatsoever, for the purpose of producing a print or impression of all or any part or parts of a bank note, or of a blank bank note of the said governor and company, of the description aforesaid, without an authority in writing from the said governor and company; or shall use any such plate so engraved, cut, etched, scraped, or by any other art, means, or device made; or shall use any other instrument or contrivance for the making or producing of any such bank note or blank bank note, or part of a bank note of the description aforesaid; or if any person or persons shall, after and after the passing of this act, without such authority as aforesaid, knowingly, and without lawful excuse, have in his, her, or their custody any such plate or instrument, or, without such authority as aforesaid, shall knowingly or wilfully utter, publish, or put away any such blank bank note, or part of such


Engraving, using, or having any plate producing a print of any part of a bank of England note, without authority; felony.

te of the description aforesaid ; every person so offending in y of the cases aforesaid, and being thereof convicted according law, shall be adjudged a felon, and shall be transported for a term of fourteen years.

1 G. 4, c. 92.

2. And whereas divers frauds have been practised by making and publishing papers with certain words and characters, so as to resemble the notes of the governor and company of the Bank of England, as to appear to ignorant and unwary persons to be the notes of the said governor and company ; and it is necessary for the security of the public, that such practices as applied to the notes of the said governor and company, of the description aforesaid, should be prevented ; be it therefore further enacted, that if any person or persons, from and after the passing of this act, shall engrave, cut, etch, scrape, or by any other art, means, or device make ; or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means, or contrivance made ; or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means or contrivance making, in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixture of metals, or upon wood, or any other materials, or upon any plate whatsoever, by line work, as or for the groundwork of a promissory note or bill of exchange, the impression taken from which line work shall be intended to resemble the groundwork of a bank note of the said governor and company of the description aforesaid, or by any device, the impression taken from which shall contain the words " Bank of England " in white letters, upon a black, sable or dark ground, either with or without white or other lines therein, or shall contain, in any part thereof, the numerical sum or amount of any promissory note, or bill of exchange, in black and red register work, or shall show the reversed contents of a promissory note or bill of exchange, or of any part of a promissory note or bill of exchange, or shall contain any word or words, figure or figures, character or characters, pattern or patterns, which shall be intended to resemble the whole, or any part of the matter or ornaments of any bank note of the description aforesaid ; or shall contain any word, number, figure or character, in white on a black, sable, or dark ground, either with or without white or other lines therein, which shall be intended to resemble the numerical sum or amount in the margin, or any other part of any bank note of the said governor and company, without an authority in writing for that purpose from the said governor and company, to be produced and proved by the party accused ; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, use any such plate, wood, or other material so engraved, cut, etched, scraped, or by any other art, means or contrivance made, or shall use any other instrument or contrivance for the making or printing upon any paper or other material, any word or words, figure or figures, character or characters, pattern or patterns, which shall be intended to re-

Engraving &c., on any plate, any resemblance of groundwork like that of a bank of England note, without authority, or having or using such plate, or uttering any impression from it ; felony.

1 G. 4, c. 92.  semble the whole, or any part of the matter or ornaments of any such note of the said governor and company, of the description aforesaid, or any word, figure, or character, in white on a black, sable, or dark ground, either with or without white or other lines therein, which shall be apparently intended to resemble the numerical sum or amount in the margin, or any other part of any bank note of the said governor and company; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly have in his, her, or their custody or possession, any such plate or instrument, or shall knowingly and wilfully utter, publish, or dispose of, or put away any paper or other material containing any such word or words, figure or figures, character or characters, pattern or patterns, as aforesaid, or shall knowingly and willingly have in his, her, or their custody or possession, any paper or other material containing any such word or words, figure or figures, character or characters, pattern or patterns as aforesaid, without lawful excuse, the proof whereof shall lie upon the person accused; every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

The signatures on bank of England notes may be impressed by machinery.

3. And whereas it is expedient that the name or names of the person or persons entrusted and authorized by the said governor and company to sign bank notes, on behalf of the said governor and company, should be impressed by machinery upon bank notes of the description aforesaid, in such form as may, from time to time, be adopted by the said governor and company, instead of being subscribed in the hand-writing of such person or persons respectively. And whereas doubts may arise respecting the validity of such notes, be it therefore declared and enacted, that all bank notes of the said governor and company, of the description aforesaid, whereon the name or names of any person or persons intrusted or authorized to sign such notes on behalf of the said governor and company, shall or may be impressed by machinery provided for that purpose by the said governor and company, and with the authority of the said governor and company, shall be and be taken to be good and valid to all intents and purposes, as if such notes had been subscribed in the proper hand-writing of the person or persons intrusted or authorized by the said governor and company to sign the same respectively, and shall be deemed and taken to be bank notes within the meaning of all laws and statutes whatsoever, and shall and may be described as bank notes in all indictments and other criminal and civil proceedings whatsoever; any law, statute, or usage to the contrary notwithstanding.

37 Geo. 3, c. 54, (a) s. 11.—That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited,

Forging or altering debentures; felony.

(a) Entitled, "*An act to enable the proprietors of debenture issued by Government, to convert them into stock, transferable at the bank of Ireland.*"

or wilfully act or assist in the forging or counterfeiting of any such debenture or debentures; or shall alter any number, figure, or word therein, or utter or publish as true, any such false, forged, counterfeited, or altered debenture or debentures, with intention to defraud the governor and company of the bank of Ireland, or any body politic or corporate, or any person or persons whatsoever; every such person or persons so forging or counterfeiting, or causing or procuring to be forged or counterfeited, or wilfully acting or assisting in the forging or counterfeiting, or altering, uttering, or publishing as aforesaid, shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy. 37 G. 3, c. 51.

12. That if any person or persons shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting of any letter of attorney, or other authority or instrument, to transfer, assign, sell, or convey any part or share of or in any principal sum or stock already created, or to be hereafter created, and made transferable at the bank of Ireland, or to receive any interest, or dividend or dividends payable at the bank of Ireland, or any part thereof, or shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting of the name or names of any proprietor or proprietors of any such part or share of or in such principal sums or stock, or interest, dividend or dividends as aforesaid, in or to any such pretended letter of attorney, instrument, or authority; or shall knowingly and fraudulently demand, or endeavour to have any such part or share of or in such principal sums or stock, interest, dividend or dividends, or any part thereof, transferred, assigned, sold, or conveyed, or such annuity or annuities, interest, dividend or dividends, or any part thereof, to be received by virtue of any such counterfeited or forged letter of attorney, authority, or instrument; or shall falsely and deceitfully personate any true and real proprietor or proprietors of the said shares of or in the said principal sums or stock, interest, dividend or dividends, or any of them, or any part thereof, and thereby transferring, or endeavouring to transfer, any part or share of or in the said principal sums or stock; or receiving, or endeavouring to receive the money of such true and lawful proprietor or proprietors, as if such offender or offenders were the true and lawful owner or owners thereof; then and in every or any such case, such offender or offenders shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy. Forging letter of attorney to transfer stock, or personating proprietor; felony, death.

13. That from and after the passing of this act, if any person or persons shall forge, counterfeit, or alter any dividend warrant or warrants for payment of any annuity, interest, or money payable in pursuance of this act, at the bank of Ireland, or any endorsement thereon, or shall offer, or dispose of, or put away Forging dividend warrant, or uttering; felony, death.

37 G. 3, c. 54. any such forged, counterfeited, or altered dividend warrants, for payment of any annuity, interest, or any sum payable as aforesaid, or the endorsement thereon; or money therein contained, or pretended to be due any part thereof, of the said governor and company of Ireland, or any of their officers or servants, by any dividend warrant, or warrant for payment of any annuity, or money payable as aforesaid, or the endorsement to be forged, counterfeited, or altered, with intent to defraud the said governor and company of the bank of Ireland, or any other body politic or corporate, or any persons whatsoever; every person or persons so offending shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Making transfers of stock in name of proprietor, to defraud others; felony.

14. That if any person or persons shall wilfully assist in making any transfer of any interest, part, or in any principal sums or stock, annuity or annuities, or any act made or declared transferable at the bank of Ireland, in which transfers of principal sums, stock, as aforesaid are, or, in pursuance of this act, shall be made, or shall utter or publish any such false, forged, or counterfeited transfer, or shall knowingly the name or names of any person or persons not being the owners, or proprietor or proprietors of such principal sums, or stock, or annuity or annuities, transferable as aforesaid, with intent to defraud the said governor and company of Ireland, or any other body politic or corporate, or any persons whatsoever, such person or persons so assisting in making such transfer as aforesaid, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.

Making false transfers, felony.

15. That if any person or persons whatsoever, shall make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall wilfully act in the falsely making, forging, or counterfeiting of any interest, part, or share of or in any principal sum or annuity or annuities, by this act made or declared transferable at the bank of Ireland; or shall utter or publish any such false, forged, or counterfeited transfer, or shall knowingly the same to be false, forged, or counterfeited, with intent to defraud the said governor and company of Ireland, or any other body politic or corporate, or any persons whatsoever; all and every person or persons so offending, shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy.

Making false entries in the transfer books; felony.

16. That if any person or persons whatsoever, shall make or assist in making any false entry, or shall alter or assist in altering any word or figure in the books of account kept, or, in pursuance of this act, shall be kept by the said governor and company of the bank of Ireland, wherein the several accounts of the owners or proprietors of principal sums, or stock, or annuities, by this act

and transferable at the bank of Ireland, are, or, in pursuance of this act, shall be entered and kept, or shall in any manner wilfully falsify the account or accounts of any such owner or proprietor, in the books of the said governor and company, when such accounts are, or, in pursuance of this act, shall be entered and kept, with intent to defraud the said governor and company of the bank of Ireland, or any other body politic or corporate or any person or persons whatsoever; every such person or persons so offending, shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy.

27 G. 2, c. 34.

17. And to prevent dividend warrants being made out for different sums than the sums really due, by which forgeries and frauds in transfers and dividend warrants may be committed:

It is enacted, that if any clerk, officer or servant of, or other person or persons employed, or intrusted by the said governor and company, shall knowingly or wilfully make out or deliver, or cause or procure to be made out or delivered, or wilfully act

Bank clerk making out false dividend warrant.

as a clerk, officer or servant of, or other person or persons employed, or intrusted by the said governor and company, in the making out or delivering of any dividend warrant or warrant for payment of any annuity, or interest, or money payable in pursuance of this act, at the bank of Ireland, for a greater or less amount than the person or persons on whose behalf or pretended behalf such dividend warrant, or warrant for payment of any annuity or interest, or money payable as aforesaid, shall be made out, is or are entitled to, with intent to defraud the said governor and company or the bank of Ireland, or any other body politic or corporate, or any person or persons whatsoever; all and every such person or persons so offending, being in due form of law convicted of any such offence or offences as aforesaid, shall be transported for seven years.

48 Geo. 3, c. 1, s. 9.—That if any person or persons shall forge or counterfeit any exchequer bill, or any indorsement or writing thereupon or therein; or tender in payment any such forged or counterfeited bill; or any exchequer bill with such counterfeit indorsement or writing thereon, or shall demand or receive such counterfeit bill, or any exchequer bill with such counterfeit indorsement or writing thereupon or therein, exchanged for ready money or for another exchequer bill, by any person or persons, body or bodies politic or corporate, who shall be obliged or required to exchange the same, or by any other person or persons whatsoever, knowing the bill so tendered in payment, or demanded to be exchanged, or the indorsement or writing thereupon or therein, to be forged or counterfeited, and with intent to defraud his majesty, his heirs and successors, or any persons to be appointed to pay off the same, or any of them, to pay any interest thereupon, or the person or persons, body or bodies politic or corporate, who shall contract or circulate or change the same, or any of them, or any other person or persons, body or bodies politic or corporate; then every such person or persons so offending, being thereof lawfully convicted, shall be adjudged a felon, and shall suffer as in cases of felony without benefit of clergy.

Forging &c., exchequer bills, felony.

13 G. 3, c. 142.

Forging cer-
tain birth re-
gister certifi-
cates, and war-
rants of attor-
ney.

48 Geo. 3, c. 142, (a) s. 27.—That if any person or p shall forge, counterfeit, or alter, or cause or procure to be f counterfeited, or altered, or knowingly or wilfully act or as the forging, counterfeiting, or altering any register or regis the birth or baptism of any person or persons, to be appoi nominee(b) or nominees, under the provisions of this act, copy or certificate of any such register, or the name or na any witness or witnesses to any such certificate, or any at or affirmation required to be taken for any of the purposes act, or the certificate of any judge, baron of the excheque tice of the peace, or magistrate, of any such affidavit or a tion having been taken before him, or any certificate of a vernor or person acting as such, or minister or consul, or magistrate of any province, town, or place, or other pers thorized by this act to grant any certificate of the life or d any nominee, or any certificate or certificates of the officer appointed by the said commissioners for the reduction of t tional debt, or of any cashier or clerk of the bank of land ; or shall forge or counterfeit, or shall cause or p to be forged or counterfeited, or knowingly or wilful or assist in the forging or counterfeiting the name or of any person or persons, in or to any transfer of bar nities for the purchase of any life annuity, or in or transfer or acceptance of any life annuity in the bo the governor and company of the bank of England, or a ceipt or discharge for any life annuity, or for any payn payments due, or to become due thereon, or to any le attorney, or other authority or instrument, to transfer or any bank annuities or life annnties. under the provisions act, or to receive any life annuities, or any payment or pay due or to become due thereon ; or shall wilfully, falsel deceitfully personate any true and real nominee or nomim shall wilfully deliver or produce to any person or persons under the authority of this act, or shall utter any such forg gister, certificate, affidavit, or affirmation, knowing the s be forged, counterfeited, or altered, with intent to defra majesty, his heirs and successors, or any other person or p whomsoever ; then and in every such case, all and every or persons so offending, and being lawfully convicted t shall be adjudged guilty of felony, and shall suffer deat cases of felony, without benefit of clergy.(c)

Forging cer-
tain certifi-

5 Geo. 4, c. 53, (d) s. 22.—That if any person or p

(a) Entitled, “ *An Act for enabling the Commissioners, reduction of the National Debt to grant life annuities.*”

(b) Viz. the person named as the *cestui que vie*, by th chaser of a government life annuity.

(c) See the act 2, 3 Will. 4, c. 123, s. 2, p. 79.

(d) Entitled, “ *An Act to permit the mutual transfer of in certain public stocks or funds transferable at the Banks of land and Ireland respectively.*”

shall forge or counterfeit, or cause or procure to be forged or counterfeited, or shall willingly act or assist in the forging or counterfeiting any certificate or duplicate certificate required by the Statute; or shall alter any number, figure, or word therein; or shall utter and publish as true, any such false, forged, counterfeited, or altered certificate, with intent to defraud the governor and company of the bank of England, or the governor and company of the bank of Ireland, or any body politic or corporate, or any person or persons whomsoever; every such person or persons so forging or counterfeiting, or causing or procuring to be forged or counterfeited, or willingly acting or assisting in the forging or counterfeiting, or altering, uttering, or publishing as aforesaid, being thereof convicted in due form of law, shall be adjudged guilty of felony, and shall suffer death as a felon without benefit of clergy.

6 G. 4, c. 53.

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 cates of transfer of stock; felony.

10 Geo. 4, c. 50, (a) s. 124. That if any person or persons shall knowingly and wilfully forge or counterfeit, or knowingly and wilfully act or assist in forging or counterfeiting the name or hand-writing of the lord high treasurer, or of the commissioners of his majesty's treasury for the time being, or of any or either of them, to any power of attorney for the sale or transfer of any stock, or the name or hand-writing of the said commissioners for the time being of his majesty's woods, forests, and land revenues, or of any or either of them, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money in the hands or custody of the governor and company of the bank of England, or of the bank of Ireland, or of any private banker, on account of the said commissioners; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any draft, instrument, or writing in form of a draft, made by the said commissioners, or any or either of them, or shall utter or publish any such, knowing the same to be forged or counterfeited, with an intent to defraud the said governor and company of the bank of England or of the bank of Ireland, or any private banker, or any body corporate, or any person or persons whomsoever; every person or persons so offending, being thereof lawfully convicted, shall be, and is, and are hereby declared and adjudged to be guilty of felony.

Forging the name of the lord high treasurer &c., to powers of attorney &c., to transfer stock or obtain money; felony.

1 & 2 Will. 4, c. 33, (b) s. 95. That if any person or persons

Forging any order certifi-

(a) Entitled, "An act to consolidate and amend the laws relating to the management and improvement of his majesty's woods, forests, parks, and chases; of the land revenue of the crown within the survey of the Exchequer in England; and of the land revenue of the crown in Ireland; and for extending certain provisions relating to the same to the Isles of Man and Alderney."

(b) Entitled, "An act for the extension and promotion of public works in Ireland."

1 & 2 W. 4, c.
33.

rate &c., of
the commis-
sioners of
public works;
felony.

shall forge, counterfeit, or alter, or cause or procure to be forged, counterfeited, or altered, or knowingly or wilfully act or assist in the forging, counterfeiting, or altering any certificate or certificates of the commissioners for the execution of this act, or of them, or any order, certificate, receipt or receipts, to be given or made by any officer of his majesty's exchequer or treasury of the bank of Ireland, in pursuance of this act; or shall wilfully deliver any such forged, counterfeited, or altered order, certificate, or receipt to the auditor of the receipt of his majesty's exchequer in Ireland, or to any officer appointed by him, or to the teller thereof, or to the commissioners for the execution of this act, or any of them, or to any officer or officers appointed by them or any of them, in the execution of the powers of this act; or shall utter any such forged, counterfeited, or altered order, certificate or certificates, receipt or receipts, knowing the same to be forged, counterfeited, or altered, with intent to defraud his majesty, his heirs or successors, or any body or bodies politic or corporate, or any person whomsoever; then and in every such case, all and every person or persons so offending, and being thereof lawfully convicted, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.


Counterfeit-
ing certi-
ficates, orders,
&c.; felony.

3 Geo. 4, c. 113, (a) s. 23.—That if any person or persons shall forge, counterfeit or alter, or cause or procure to be forged, counterfeited or altered, or knowingly or wilfully act or assist in forging, counterfeiting or altering any certificate or certificates, or any order or orders for any payment to be made under this act, or any appointment or appointments to be made under this act, or any of them, or any receipt or receipts to be given by the cashier or cashiers of the bank of England or bank of Ireland, in pursuance of this act; or shall wilfully utter or deliver any such forged, counterfeited or altered certificate, order, appointment or receipt, to any person or persons in the execution of the powers of this act; or shall utter any such forged, counterfeited or altered certificate, order, appointment or receipt, knowing the same to be forged, counterfeited or altered, with intent to defraud his majesty, his heirs or successors, or any body or bodies politic or corporate, or any person or persons whomsoever; then and in every such case, all and every person or persons so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as a felon without benefit of clergy.

(a) Entitled, "An act to amend an act, passed in the fiftieth year of his late majesty, [c. 117,] for directing that accounts of increase and diminution of public salaries, pensions, and allowances shall be annually laid before parliament; and for regulating and controlling the granting and paying such salaries, pensions, and allowances."

10 C. 1, st. 3, c. 20, s. 1.—Whereas it is of late grown to be a great and general grievance to his majesty's subjects within this realm of Ireland, that many lewd persons of base condition, for any little reward or recompense, have of late years used, and will do use to levie fines and suffer recoveries of lands and other inheritments, to knowledge statutes, recognizances, bailes, and judgments, in the name or names of any other person or persons not privie or consenting to the same; which hath and daily doth turn to the great inquietation, charge, trouble, and undoing of many of the good subjects of this kingdome, and the rather for that there is no remedy in law to reform these and the like abuses; for remedy whereof, be it enacted, &c., that all and every person and persons which at any time after the end of this present session of parliament shall acknowledge or procure to be acknowledged any fine or fines, recovery or recoveries, deed or deeds enrolled, statute or statutes, recognizance or recognizances, baile or bailes, judgement or judgements, in the name or names of any other person or persons not privie and consenting to the same, and being thereof lawfully convicted or attainted, shall be adjudged, esteemed and taken to be felons, and suffer the paines of death, and incurre such forfeitures and penalties as felons in other cases convicted or attainted doe by the lawes of Ireland lose and forfeit, *without the benefit or privilege of clergy to be allowed to any such offender or offenders.*

10 C. 1, st. 3,
c. 20.



Acknowledg-
ing fines, re-
coveries, &c.
in names of
others not
consenting
thereto; fe-
lony.

3. Provided always, and be it likewise enacted by the authority aforesaid, that this act shall not extend to any judgement or judgements acknowledged by any attorney or attorneys of record, for any person or persons against whom any such judgement or judgements shall be had or given.

Not to extend
to judgments
entered by at-
torney of re-
cord.

7 Will. 3, c. 18, (a) s. 4.—That any person or persons, who shall, before any person or persons empowered by virtue of this act as aforesaid to take bail or bails, represent or personate any other person or persons, whereby the person or persons so represented and personated may be liable to the payment of any sum or sums of money, for debt or damages to be recovered in the same suit or action wherein such person or persons are represented and personated, as if they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be felons, and suffer the pains of death, and incur such forfeitures and penalties, as felons in other cases convicted or attainted do by the law of this realm lose and forfeit.

Personation
before the
commission-
ers for taking
special bail;
felony.

23 & 24 Geo. 3, c. 22, s. 22.—That if any person or persons shall, from and after the passing of this act, forge or counterfeit, or procure to be forged or counterfeited, or willingly aid or

Forging the
name of ac-
countant ge-
neral, or

(a) Entitled, "An act for taking special bails in the country, upon actions and suits depending in the courts of King's Bench, Common Pleas, and Exchequer at Dublin."

23 & 24 G. 2,
c. 22.

cashier of the
bank of Ire-
land, or utter-
ing &c. ; fe-
lony.

assist in the forging or counterfeiting the name or hand-writing of the said accountants general, (a) or either of them, or any of the cashiers of the said governor and company of the bank of Ireland, to any certificate, report, entry, endorsement, declaration of trust, note, direction, authority, instrument, or writing whatsoever, for or in order to the receiving any the money or effects, or any security whatsoever, of or belonging to any of the suitors of the court of Chancery, or court of Exchequer; or shall forge or counterfeit, or procure to be forged or counterfeited, or wilfully aid or assist in forging or counterfeiting any certificate, report, entry, endorsement, declaration of trust, note, direction, authority, instrument in writing in form of a certificate, report, entry, endorsement, declaration of trust, note, direction, or authority, instrument, or writing made by such accountants general, or either of them, or any of the cashiers of the said governor and company of the bank of Ireland; or shall utter or publish any such, knowing the same to be forged or counterfeited, with intent to defraud any person whatsoever; every such person or persons so offending, being lawfully convicted thereof, shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in case of felony, without benefit of clergy.

Forging memorial or certificate of registry of deeds.

* is.

† him or herself.

‡ or other persons empowered by the said former act, or this act, for taking affidavits.

6 Ann. c. 2, s. 17, [and 8 Ann. c. 10, s. 4.(b)]—That if any person or persons shall at any time forge or counterfeit any such [memorial or] certificate, as [are*] hereinbefore mentioned and directed, and be thereof lawfully convicted; such person or persons shall incur and be liable to such pains and penalties, as in and by an act of parliament made in the twenty-eighth year of the reign of queen Elizabeth of blessed memory, intituled, “An act against forging evidences,” are imposed upon offenders therein mentioned; and that if any person or persons shall at any time forswear [himself†] before the said register, or his deputy,‡ in any of the cases aforesaid, and be thereof lawfully convicted, such person or persons shall incur and be liable to the same penalties, as if the same oath had been made in any of the courts of record at Dublin.(c)

(a) Viz. of the courts of Chancery and Exchequer.

(b) By the act 6 Ann. c. 2, a public office was erected for the registering of memorials of all deeds and wills relating to lands in Ireland. By s. 7 of that act, the register or his deputy, upon the registering of every deed or will, is ordered to endorse a certificate thereof on the deed, or will or probate. By the 8 Ann. c. 10, provision is made for the registry of memorials of deeds executed in Great Britain, and of wills, the devisees under which reside in Great Britain, whereby lands in Ireland may be affected; and the register is directed to give a certificate of their registry on the back of the deed, or on a distinct parchment.

(c) The 4th section of 8 Ann. c. 10, is similar to the above,

8 Geo. 1, c. 15, s. 4.(a)—That if any person or persons shall at any time forge or counterfeit any such certificate as is hereinbefore mentioned and directed, and shall be thereof lawfully convicted, such person or persons shall incur and be liable to such pains and penalties as in and by an act of parliament made in the twenty-eighth year of the reign of Queen Elizabeth of blessed memory, intituled, "An act against forging evidences, &c.," are imposed upon offenders therein mentioned for forging any false deed or writing sealed, whereby any estate of freehold or inheritance may be molested, troubled, or defeated: and if any person or persons shall at any time forswear him or herself before the said register, or his deputy, or other person empowered by the said two former acts, or either of them, or this act, for taking affidavits in any of the cases aforesaid, and be thereof lawfully convicted, such person or persons shall incur and be liable to the same penalties, as if the same oath had been voluntarily and corruptly made in a cause depending in any of the courts of record in Dublin in a matter material in such cause.

8 G. 1, c. 15
 Forging certificate of registry search of mortgage satisfied.

Perjury.

3 Geo. 4, c. 116, (b) s. 7.—That if any person or persons shall at any time forge or counterfeit any such memorial or certificate as are hereinbefore mentioned, and be thereof lawfully convicted, such person or persons shall incur and be liable to such pains and penalties as in and by an act of parliament made in Ireland in the twenty-eighth year of the reign of Queen Elizabeth, intituled, "An act against forging evidence," are imposed upon such like offenders as therein mentioned: and if any person or persons shall at any time wilfully swear falsely before any such extraordinary commissioner in any of the cases aforesaid, and be thereof lawfully convicted, such person or persons shall incur and be liable to the same pains and penalties as if such oath had been made in any of the courts of record in Great Britain or Ireland.

Forging memorials and certificates of the registry of deeds.

with the exception of the words in brackets, which are omitted, and those in the margin, which are inserted.

(a) By s. 2 of this act, the register or his deputy is authorized and required to give negative certificates of searches for deeds or wills. And by s. 3, (amending 8 Ann. c. 10, s. 3,) the register is required to enter satisfaction on the memorials of mortgages, when a certificate of their having been fully paid off, signed and verified as therein mentioned, shall have been produced by the mortgagee, his executors, administrators, or assigns; and when the original mortgage deed, or, in case of loss or destruction, a certificate thereof, signed and attested as therein mentioned, shall have been produced by the mortgagor, his heirs, executors, administrators, or assigns.

(b) Entitled, "*An act for the more convenient and effectual registering in Ireland deeds executed in Great Britain.*"

7 G. 3, sess. 2,
c. 15.

Forging or
transposing
marks or
stamps on
gold or silver
plate; felony.

47 Geo. 3, sess. 2, c. 15, s. 16, (*pars.*)—That if any person shall cast, forge, or counterfeit, or cause or procure to be cast, forged, or counterfeited, any mark or stamp used or directed to be used in pursuance of this act, for the marking or stamping of gold or silver plate; or shall cast, forge, or counterfeit, or shall cause or procure to be cast, forged, or counterfeited any mark, stamp, or impression, in imitation of, or to resemble any mark, stamp, or impression made or to be made with any mark or stamp used or to be used, as aforesaid; or shall mark or stamp, or cause or procure to be marked or stamped, any wrought plate of gold or silver, or any wares of silver, brass, copper, or other metal, gilt over or plated, and resembling plate of gold or silver, with any mark or stamp which hath been or shall be cast, forged, or counterfeited at any time, in imitation of, or to resemble any mark or stamp used or to be used as aforesaid; or shall transpose or remove, or cause or procure to be transposed or removed, from one piece of wrought plate to another piece of wrought plate, or from any piece of wrought plate to any vessel of silver, brass, or other metal as aforesaid, any mark, stamp, or impression made or to be made by or with any mark or stamp used or to be used as aforesaid; or shall sell, exchange, or expose to sale, or export out of Ireland, any wrought plate of gold or silver, or any vessel of silver, brass, or other metal as aforesaid, with any such forged or counterfeited mark, stamp, or impression thereon, or with any mark, stamp, or impression which hath been or shall be transposed or removed, or cut out from any piece of wrought plate, knowing such mark, stamp, or impression to be forged, counterfeited, or transposed, cut out, or removed as aforesaid; or shall wilfully or knowingly have or be possessed of any mark or stamp which hath been or shall be forged or counterfeited, in imitation of, or to resemble any mark or stamp used or to be used as aforesaid; every such person offending in any or either of such cases aforesaid, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be sentenced to be transported for the term of seven years, in such manner as other felons may be transported under any act or acts in force in Ireland.


Forging the
seals of brown
linen,

5 & 6 Will. 4, c. 27, (a) s. 19.—That it shall and may be lawful for every such committee, or any five or more of them, to choose and prescribe the form and device of the seal or stamp, to be used by the seal-master of their respective county, and to alter the same as often as such committee shall think fit; and if any person shall forge or counterfeit any seal or stamp of any

(a) Entitled, “*An act to continue and amend certain regulations for the linen and hempen manufactures of Ireland.*” It came into force at the end of the session in which it was passed, (September, 1835,) and has been since continued by the 1 & 2 Vict. c. 52, for five years from the 27th of July, 1838, and until the end of the then next session of parliament.

seal-master appointed or to be appointed by such committee, or any five or more of them, to any piece or part of a piece of brown linen; such person, being thereof lawfully convicted, shall be imprisoned, with or without hard labour, for any period not exceeding one year, at the discretion of the judge or judges who shall try such offence.

5 & 6 W. 4, c.
27.



2 & 3 Will. 4, c. 123, (a) s. 1.—[*Recites the 11 Geo. 4, & 1 Will. 4, c. 66, s. 1, Eng.*] And whereas by the law and practice now prevailing in Scotland and in Ireland, the penalty of death may be awarded in certain cases, for forgery, for uttering counterfeit instruments, and for false personation. And whereas it is expedient to abolish the punishment of death for offences of that nature, except so far as relates to wills, and certain powers of attorney, as herein-after mentioned; be it therefore, &c., that where any person shall, after the passing of this act, be convicted of any offence whatsoever, for which the said act enjoins or authorizes the infliction of the punishment of death; or where any person shall, after the passing of this act, be convicted in Scotland or Ireland of any offence now punishable with death; which offence shall consist, wholly or in part, of forging or altering any writing, instrument, matter, or thing whatsoever, or of offering, uttering, or disposing of any writing, instrument, matter, or thing whatsoever, knowing the same to be forged or altered, or of falsely personating another; then, and in each of the cases aforesaid, the person so convicted of any such offence as aforesaid, or of procuring, or aiding, or assisting in the commission thereof, shall not suffer death, or have sentence of death awarded against him, but shall be transported beyond the seas for the term of such offender's life.

Persons convicted of certain forgeries shall not suffer death.

2. Provided always, and be it enacted, that notwithstanding any thing hereinbefore contained, this act shall not be construed to affect or alter the said recited act, or any other act or law now in force, so far as the same may authorize the punishment of death to be inflicted upon any person convicted, either in England, Scotland, or Ireland, of forging or altering, or of offering, uttering, or disposing of, knowing the same to be forged or altered, any will, testament, codicil, or testamentary writing, with intent to defraud any body corporate or person whatsoever, or of forging or altering, or of uttering, knowing the same to be forged or altered, any power of attorney, or other authority, to transfer any share or interest of or in any stock, annuity, or other public fund which now is, or hereafter may be transferable at the bank of England, or South Sea House, or at the bank of Ireland, or to receive any dividend payable in respect of any such share or interest, with intent to defraud any body corporate or person whatsoever, or of procuring, aiding, or assisting in the commission of

This act not to extend to forgery of wills and certain powers of attorney.

(a) Entitled, "*An act for abolishing the punishment of death in certain cases of forgery.*"

2 & 3 W. 4, c.
123.

Copy of forged instrument need not be set forth in indictments.

Convicts liable to transportation under 2 & 3 W. 4, c. 123, may be previously imprisoned.

any of the said offences; but that the punishment for each and every of the said offences, and for procuring, aiding, or assisting in the commission thereof, shall continue to be the same as if this act had not been passed.

3. And in order to prevent justice from being defeated by clerical or verbal inaccuracies, be it enacted, that in all informations or indictments for forging, or in any manner uttering any instrument or writing, it shall not be necessary to set forth any copy or fac-simile thereof; but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same, any law or custom to the contrary notwithstanding.

3 & 4 Will. 4, c. 44, s. 3, (*pars*). That all persons punishable by transportation for life under an act passed in the same year [2 & 3 Will. 4] intituled, "An act for abolishing the punishment of death in certain cases of forgery," shall be liable, previously to their being transported, in case the court before whom such persons shall be convicted shall think fit, to be imprisoned, with or without hard labour, in the common gaol or house of correction, or to be confined in the penitentiary, for any term not exceeding four years nor less than one year.

CHAPTER II.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

SECT. I.

Murder.

10 Geo. 4, c. 34, (a) s. 3.—That every offence which, before the commencement of this act, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence: and all persons guilty in respect thereof, whether as principals or as accessaries, shall be dealt with, indicted, tried, and punished as principals and accessaries in murder.

Petit treason to be treated in all respects as murder.

nd. That every person convicted of murder, (b) or of being an ac-

Punishment of principals

(a) Entitled, “*An act for consolidating and amending the statutes in Ireland relating to offences against the person.*” By the first section of this act, it is enacted, that it shall extend to Ireland alone, and shall commence and take effect on the first of September, 1829. Several acts and parts of acts therein mentioned, and (s. 2) all acts and parts of acts continuing or perpetuating them, are declared to be repealed, (saving the repeal of previous enactments,) so far as they relate to offences committed after that day, or to Ireland, or to offences committed within the jurisdiction of the admiralty of Ireland. The crime of high treason and all offences relating to the revenue and to smuggling, are (s. 46,) expressly exempted from the operation of the act.

(b) *Rex v. Daunt, King's County Lent Ass. 1830.*—Murder. The evidence was, that a man named *Gallagher* made a complaint to a chief constable, stating he had escaped from a violent attack made upon him, his child, and two companions, on their return from market, by deceased and one *Geoghegan*, who were armed with a pair of tongs and a pitchfork, and who took his horses and ears; and that he feared his child was wounded. The chief constable sent out four sub-constables, of whom the prisoner was one, to arrest those two men. When the constables came to the place where the two men were, they heard a person named *Moran*, one of *Gallagher's* companions, cry out “mercy! mercy! spare my life!” Immediately eight or nine men rushed out of a yard, and struck *Gallagher* and the police, one of whom, the prisoner, fired a shot which killed *Kelly*. **BUSHE, C. J.**, in his charge to the jury, after summing up the evidence, said:—If a constable is engaged strictly in the legal discharge of his duty, and is resisted in the execution of such duty by any one, and kills the party resisting, when he has no other way of executing it, save by the extremity of taking away life, it is justifiable homicide But it is not

A constable, acting strictly in the discharge of his duty, may kill a person resisting, if he cannot otherwise be made amenable.

10 G. 4, c. 34.

and access-
aries in mur-
der.

cessary before the fact to murder, shall suffer death as every accessory after the fact to murder shall be in the discretion of the court, to be transported beyond the seas or to be imprisoned with or without hard labour in

justifiable homicide unless those two ingredients concur, that the constable should be in the strict legal discharge of his duty; and secondly, that the constable has not used force before there was an inevitable necessity for it. A constable, not being in the strict legal discharge of his duty, must not use force, until it would be indispensably necessary for him in the strict execution of his duty; then if, being a private man, the act would amount to murder, it would amount to murder in the constable; and if manslaughter in the private man, it will also be manslaughter in the constable. In the case of a constable, if the constable saw such an affray and riot going on, and he was sworn to, it was his duty to suppress it, and to use force against the rioters. If, being resisted in so doing, the life was taken, it would be justifiable homicide, provided that he waited until it was indispensably necessary, and until no other means were left to execute his duty. And that is the question for the jury. Verdict, not guilty.

A person flying from an arrest on a charge of felony, may be killed by the constable, if he cannot be otherwise secured; *aliter* in the case of a charge of misdemeanor.

Rex v. Finnerty and another, Carlow Lent Assizes. Two prisoners were constables, who had a warrant against *Watters* for a felony; they went to his house by night, and it was closed. He was inside, and being informed by the constables of the warrant, and called on to surrender, refused to do so. "After being repulsed in an attempt to escape through the back of the house, he then broke out of the door, and fled. The constables pursued him a few yards, and one of them fired, at a distance of twenty-five yards, and threw a stick at him, which missed. The prisoner immediately rose, and again took to flight. A second constable fired at the distance of twenty-five yards from where the first shot brought him again to the ground, from where he escaped. *BUSHE, C. J.*, in charging the jury, said simply this,—a constable in the execution of his duty may take away life if it be indispensably necessary for him to do so. If he have a warrant for any crime, from the lowest, whether a felony or misdemeanor, and if he cannot be otherwise secured, and the constable have no means of making him amenable to the law by killing him, he is justified in so doing. But this is different from resistance. If the warrant be for a felony, it is tantamount to resistance, and the flying felon may be killed, if he cannot be otherwise secured. In the case of a misdemeanor, resistance will justify killing, though if the constable can escape, for in such cases the law considers it better that the felon should escape, than that a life should be taken.—Verdict,

house of correction for any term not exceeding four 10 G, 4, c. 24.

That all persons conspiring, confederating, and agreeing with any person, shall be guilty of felony; and being convicted thereof, shall suffer death as felons. Conspiring to murder; felony, death.

That every person who shall solicit, encourage, persuade, or endeavour to persuade, or who shall propose to any person to do any other person, shall be guilty of felony; and being convicted thereof, shall suffer death as a felon. Solicitation to murder; felony, death.

Murder is the felonious killing of any person under the name, (i. e. not an alien enemy in the actual exercise of war, 1 Hale, 433,) with malice prepense or aforethought, either expressed or implied by law, 1 Russ. on Cr. Malice prepense is always presumed in law to exist, if a party, intending to commit any felony, takes away life,

Manslaughter is committed where life has been unlawfully designedly, and in a sudden fit of passion, or in attempting to do an unlawful and morally improper act, which does not amount to felony, Archb. Pl. & Ev. 319. Intoxication of the party is not sufficient to reduce the offence from murder to manslaughter, R. v. Carroll, 7 C. & P. 145.

Murder is excusable or justifiable, when it has been committed by mere misadventure, or by lawful command, or in defence of one's self, house, parent, child, husband, master, or servant, 1 Hale, 481; 1 Russ. on Cr. When it has been necessarily committed by an officer in dispersing a riotous or rebellious mob, 4 Bl. Com. To secure the lawful apprehension of a person charged with a misdemeanor who resists it, or of a felon who resists or flies, 81, 82. Foster's Case, Lew. C. C. 187.

When several persons are present at a murder, the blow of one is the blow of all. Thus an indictment that A gave the blow, and B, C, and D were present and abetting, is good by evidence that B gave the blow, and A, C, and D were present and abetting, 1 East P. C. 350. So also, an indictment which charged F. Finnegan with giving the mortal blow to a prisoner being present, aiding and abetting, was held good by the C. J., after consulting with Jebb, J., to be sustained by evidence of a mortal blow given by a third person not named in the indictment, both Finnegan and the prisoner being present, and abetting. R. v. Cunningham, Monaghan Sum. Ass. An acquittal of murder, under the repealed act, 10 Hen. 6, against one as principal, present, aiding, and abetting, is held to be a good plea in bar to an indictment against another for the same act, for procuring the same murder to be committed. R. v. Foy, V. & Scr. 540.

In trials for murders or inquisitions, the dimensions of wounds are stated. Mosley's Case, Lew. C. C. 189.

10 G. 4, c. 34.

Murder or manslaughter committed abroad may be tried in Ireland.

Provision for trial of murder and manslaughter, where the death or cause of death only happens in Ireland.

Attempts to murder, when evidenced by

10. That if any of his majesty's subjects(a) shall be charged in Ireland with any murder or manslaughter, or with being accessory before the fact to any murder, or after the fact to any murder or manslaughter, the same being respectively committed on land out of the United Kingdom, whether within the king's dominions or without, it shall be lawful for any justice of the peace of the county or place where the person so charged shall be, to take cognizance of the offence so charged, and to proceed therein, as if the same had been committed within the limits of his ordinary jurisdiction; and if any person so charged shall be committed for trial, or admitted to bail to answer such charge, the offence so charged may be dealt with, inquired of, tried, determined, and punished in the county or place in which such person shall be so charged, in the same manner in all respects as if such offence had been committed in that county or place; provided that nothing herein contained shall prevent any person from being tried in any place out of Ireland, in the same manner as such person might have been tried before the passing of this act.

11. That where any person being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of Ireland, shall die of such stroke, poisoning, or hurt in Ireland, or, being feloniously stricken, poisoned, or otherwise hurt at any place in Ireland, shall die of such stroke, poisoning, or hurt upon the sea, or at any place out of Ireland; every offence committed in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the county or place in Ireland in which such death, stroke, poisoning, or hurt shall happen, in the same manner in all respects as if such offence had been wholly committed in that county or place.

14. That if any person unlawfully and maliciously shall administer(b) or attempt to administer to any person, or shall

(a) This section applies only to the case of murder or manslaughter committed by a British subject; and therefore, a prisoner of war, though on board an English ship, who commits a murder there, is not within its provisions. *R. v. Despardo, Russ. & Ry. 134, 1 Taunt. 26.* Neither is a foreigner articed to serve a certain time on board an English ship, and who commits the offence before the expiration of the articles. *R. v. De Mattos, 7 C. & P. 458.* It would seem not to be necessary that he should be a British born subject. *Id. 459.* The declaration of the prisoner is good evidence against himself of being a British subject. *R. v. Helsham, 4 C. & P. 394.* In the indictment it ought to be stated that the prisoner, being a subject of his majesty, committed the offence on land out of the United Kingdom, to wit, &c., laying no venue in Ireland.

(b) *Rex v. ———, Louth Sum. Ass. 1822.* The prisoner was indicted for administering poison to his wife, with

Semble, that an indictment for adminis-

be by cutting, stabbing, or by contusion; or shall unlawfully and maliciously throw or cast at or upon, or otherwise apply to any person any corrosive or noxious liquid or substance, or, in any of the cases aforesaid, to murder such person, or any such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

And if any person unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, unlawfully and maliciously attempt to discharge any loaded arms at any person; or shall unlawfully and maliciously stab, cut, or wound any person, whether such wound be with a sharp or with a blunt instrument, and whether by cutting or contusion; or shall unlawfully and maliciously cast at or upon, or otherwise apply to any person any corrosive or noxious liquid or substance, with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or to resist the lawful apprehension (b) or detainer of the party

Shooting at, or attempting to cut, stab, or wound any person, with intent to murder &c., capital.

kill. The poison was put into her tea, but it proved to be a smell, that she could not taste it. Upon this the learned judge (JENNINGS, J.) suggested to the counsel for the prisoner, that the words in the act "administer poison," implied it should be taken. And he declared his intention to give there be an occasion for it, to bring the question before the twelve judges. The man was acquitted. *Mayne MSS.* In the case of *Reg. v. Hogan*, *Arm. Sum. Ass. 1826*, it was held by ALDERMAN I. that it had been decided by the twelve

that poisoning cannot be sustained, unless the poison be taken.

In an indictment for an-

10 G. 4, c. 34.

Proviso.

Administer-
ing poison, orwarrant is
grounded,
must be pro-
duced.

A. being fired at, and hit by one of a gang; *held*, that, upon an indictment for aiding &c., the person who fired with intent to kill, it ought to have been left, as a ground of acquittal, whether the party was or not aiding &c., in the very shot which took effect.

so offending, or of any of his accomplices, for any offence for which he or they may respectively be liable by law to be apprehended or detained; every such offender, and every person counselling, aiding, or abetting such offender, (a) shall be guilty of felony, and being convicted thereof, shall suffer death as a felon. Provided always, that in case it shall appear, on the trial of any person indicted for any of the offences above specified, that such acts of shooting or of attempting to discharge loaded arms, or of stabbing, cutting, or wounding, or throwing, casting, or applying any corrosive or noxious liquid or substance as aforesaid, were committed under such circumstances, that, if death had ensued therefrom, the same would not in law have amounted to the crime of murder, in every such case, the person so indicted shall be acquitted of felony.

16. That if any person, with intent to procure the miscarriage of any woman then being quick with child, unlawfully and ma-

(a) *Rex v. M'Ilhone, Antrim Sum. Ass. 1819.*—Indictment under the repealed statute, 43 Geo. 3, c. 58, for aiding and abetting a certain person to the jurors unknown, who shot at *James Lovell* with intent to murder. *Lovell* was a serjeant, who, with an officer and party of soldiers, went to assist constables in arresting several prisoners. The arrest was made, and, on their return, the party was surrounded by a mob, who demanded the release of the prisoners. A riot ensued; shots were fired on both sides, and *Lovell* received three slugs in the breast. The evidence was, that the prisoner was active and prominent among the rioters, and that the shot which took effect upon *Lovell* came from that party; though, by whom fired, or at what precise time, did not appear. The prisoner was, at one period, seen without arms, and exerting himself to stop the firing. When taken, he was in the act of pointing a musket at a soldier. This musket was found primed. The learned judge (MAYNE) directed the jury, that if the persons firing were of the prisoner's party, and if the prisoner were aiding in the proceeding to rescue by force and shots against the soldiers, although he did not take any aiding part as to the particular shot, they should, in that case, find him guilty. But if any of these facts failed, or if the shot were accidental, or not intended to hurt any person, they should then acquit the prisoner. Verdict, guilty. The learned judge afterwards doubted whether he ought not to have left it to the jury, as a ground of acquittal, whether the prisoner was knowing of, and aiding in the very shot which inflicted the wound, and also, whether the intent were not general to do an injury to somebody, and not the intent charged, to murder *James Lovell*. Upon the former of these points, his lordship was, after consultation with the judge who was on circuit with him (JOHNSON, J.), so satisfied, that immediately upon his return to *Dublin*, he recommended the man for a free pardon.—*Mayne MSS.*

shall administer to her, or cause to be taken by her, in or other noxious thing, or shall use any instrument or means whatever, with the like intent; every such offender, every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable as a felon; and if any person, with the intent to procure the miscarriage of any woman not being, or not being then quick with child, unlawfully and maliciously administer to her, or cause to be taken by her, any medicine or other noxious thing, or shall use any instrument or other means whatever, with the like intent; every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or imprisoned, with or without hard labour, in the common house of correction, for any term not exceeding three years, and if a male, to be once, twice, or thrice publicly whipped (the court shall so think fit), in addition to such imprisonment. And if any woman shall be delivered of a child, and shall secretly bury or otherwise dispose of the dead body of such child, endeavour to conceal the birth thereof; every offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth: provided always, that if any woman tried for the murder of her husband shall be acquitted thereof, it shall be lawful for the jury, on their verdict she shall be acquitted, to find, in case it shall appear in evidence, that she was delivered of a child, and that by such secret burying or otherwise disposing of the body of such child, endeavour to conceal the birth thereof; and upon the court may pass such sentence as if she had been convicted upon an indictment for concealment of the birth.

Will. 4, c. 26.(a)—[*Recites so much of 9 Geo. 4, c. 31, s. 1, and 10 Geo. 4, c. 34, s. 5, as relates to the dissection and hanging in chains of the bodies of murderers. Recites also 2 Geo. 4, c. 75, s. 16, Eng., and the expediency of amending the said acts.*] Be it &c., that so much of the said recited acts, &c. [9 Geo. 4, c. 31,] as authorizes the court to direct that the body of a person convicted of murder should after execution be hung in chains; and also so much of the said recited acts, &c. as were made and passed in the tenth year of the same reign, as authorized the court to direct that the body of a person convicted of murder should after execution be dissected or hung in chains; and so much of [2 & 3 Will. 4, c. 75] as provides that in

10 G. 4, c. 34.

Using means to procure the miscarriage of a woman quick with child.

The like as to a woman not quick with child.

Woman disposing of the dead body of her child to conceal the birth, guilty of a misdemeanor.

Proviso.

Repeal of provisions as to dissecting or hanging in chains the bodies of murderers.

intituled, “*An act to abolish the practice of hanging the criminals in chains.*”

4 & 5 W. 4, c.
26.

On conviction, the court shall order burial within the prison.

Sentence for murder, similar to other capital sentences.

Offences against this act committed at sea.

Punishment of manslaughter.

As to homicide not felonious.

Punishment of accessories not before provided for.

every case of conviction of any prisoner for murder, the court shall direct such prisoner to be hung in chains, shall be, and the same is hereby repealed.

2. That in every case of conviction in Ireland of any prisoner for murder, the court before which such prisoner shall have been tried, shall direct such prisoner to be buried within the precincts of the prison, within which such prisoner shall have been confined after conviction; and the sentence to be pronounced by the court shall express, that the body of such prisoner shall be buried within the precincts of such prison.

6 & 7 Will. 4, c. 30, s. 1.—[*Recites 9 Geo. 4, c. 31, ss. 4 & 6, Eng. and similar provisions in 10 G. 4, c. 34, ss. 5 & 7 as to the period of the execution of murderers, and prison regulations concerning them; and repeals so much of the said acts.*]

2. That from and after the passing of this act, sentence of death may be pronounced after convictions for murder, in the same manner, and the judge shall have the same power in all respects, as after convictions for other capital offences.

10 Geo. 4, c. 34, s. 41.—That all indictable offences mentioned in this act, which shall be committed within the jurisdiction of the Admiralty of Ireland, shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in Ireland; and may be dealt with, inquired of, tried, and determined in the same manner as any other offences committed within the jurisdiction of the Admiralty of Ireland. Provided always, that nothing herein contained shall alter or affect any of the laws relating to the government of his majesty's land or naval forces.

SECTION 2.

Manslaughter.

10 Geo. 4, c. 34, s. 12.—That every person convicted of manslaughter shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding four years, or to pay such fine as the court shall award; and it shall be lawful for the court to direct that the offender shall be kept in solitary confinement, during the whole or any portion or portions of such imprisonment or imprisonment with hard labour.

13. Provided always, and be it enacted, that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

40 (*pars.*) That every accessory after the fact to any felony punishable under this act, for whom no punishment has been hereinbefore provided, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years.

[*Admiralty offences, p. 88. Manslaughter committed abroad, p. 84.*]

SECTION 3.

Assault and False Imprisonment.

11 Anne, c. 5, s. 7.—And for preventing such quarrels as may or may happen upon the account of gaming; be it &c., that in case any person or persons whatsoever shall assault, or beat, or shall challenge, or provoke to fight, any other person or persons whatsoever, upon account of any money won by gaming, playing, or betting, at any of the games aforesaid, (a) such person or persons assaulting, or beating, or challenging, or provoking to fight, such other person or persons upon the account aforesaid, shall, being thereof convicted, upon an indictment or information to be exhibited against him or them for that purpose, forfeit to her majesty, her heirs and successors, all his goods, chattels, and personal estate whatsoever, and also suffer imprisonment, without bail or mainprize, in the common gaol of the county where such conviction shall be had, during the term of six years.

Assaults on account of money won at play.

7 & 8 Geo. 4, c. 18, s. 1.—Whereas it is expedient to prohibit the setting of spring-guns and mantraps, and other engines calculated to destroy human life, or inflict grievous bodily harm; and therefore &c., that from and after the passing of this act, any person shall set or place, or cause to be set or placed, any spring gun, mantrap, or other engine calculated to destroy human life, or inflict grievous bodily harm, with the intent that the same, or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, the person so setting or placing, or causing to be so set or placed, such gun, trap, or engine as aforesaid, shall be guilty of a misdemeanor.

Setting man-traps &c.; misdemeanor.

2. Provided always, and be it further enacted, that nothing herein contained shall extend to make it illegal to set any gun or trap, such as may have been or may be usually set, with the intent of destroying vermin.

Proviso for vermin traps.

3. That if any person shall knowingly and wilfully permit any such spring-gun, mantrap, or other engine as aforesaid, which may have been set, fixed, or left in any place then being so, or afterwards coming into his or her possession or occupation, by some other person or persons, to continue so set or fixed, the person so permitting the same to continue shall be deemed to have set and fixed such gun, trap, or engine, with such intent as aforesaid.

Persons permitting traps to be set &c., deemed to have set them.

(a) Viz.: "cards, dice, tables, tennis, bowls, or other game or games whatsoever," s. 1.

7 & 8 G. 4, c. 13.

Proviso for
traps set in
houses.

Arrest of
clergyman
during divine
service.

Assaults arising from
combination.

Violent assault.

It is a question for the jury whether an injury amounts to a grievous bodily harm.

4. Provided always, and be it further enacted, that nothing in this act shall be deemed or construed to make it a misdemeanor within the meaning of this act, to set, or cause to be set, or to be continued set, from sunset to sunrise, any spring-gun, machine, or other engine which shall be set, or caused or continued to be set, in a dwelling-house for the protection thereof.

10 Geo. 4, c. 34, s. 27.—That if any person shall arrest any clergyman upon any civil process, while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof; every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall suffer such punishment, by fine or imprisonment, or by both, as the court shall award.

28. That if any person shall, in consequence of any unlawful combination or conspiracy respecting any trade, business, or manufacture, or respecting any person concerned or employed therein, unlawfully and maliciously assault any person, with intent to do to such person any grievous bodily harm; every such offender shall be liable to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years, and if a male, to be once, twice, or thrice privately whipped (if the court shall think fit), in addition to such imprisonment.

29. That if any person shall unlawfully and maliciously assault, beat, or wound any person, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, (a) every such offender, being convicted thereof, shall be liable to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term

(a) *Rex v. Phillips, Timmons, and four others, Trim Lent Ass. 1830.*—Indictment under the 10 Geo. 4, c. 34, s. 29, for an assault so as to endanger life, and so as to inflict grievous bodily harm, for an unlawful assembly, a riot, and common assault. The evidence was, that the prosecutor's house had been broken into, and that he had received a deep wound near the eye, and several cuts in the breast, or rather contusions. One witness, a surgeon, swore that he did not consider the wounds as dangerous to life, but that they certainly constituted a grievous bodily harm; and were of such a nature as to disable the prosecutor from working for a week. BUSHÉ, C. J., said, that, as to the first count, he thought no case had been made out; but that, upon the second, there was a case to go to the jury. He was not satisfied that the evidence was such as to warrant him in withholding the question. It was left to the jury to say whether there was a "grievous bodily harm."—Verdict, not guilty.

not exceeding three years, and if a male, to be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment, if the court shall think fit.

10 G. 4, c. 34.



30. That if any person shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, effects wrecked, or stranded, or cast on shore, or lying under water; every such offender, being convicted thereof, shall be liable to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for such term as the court shall award.

Assault on officers &c, for endeavouring to save ship-wrecked property.

31. That where any person shall be charged with and convicted of any of the following offences or misdemeanors; that is to say, of any assault with intent to commit felony; of any assault upon any peace officer or revenue officer in the due execution of his duty, or upon any person acting in aid of such officer; of any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulted, or of any other person, for any offence for which he or they may be liable by law to be apprehended or detained; in any such case the court may sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and may also (if the court shall so think fit) fine the offender, and require him to find securities for keeping the peace.

Certain assaults; how punishable.

32. That if any person shall beat, wound, or use any other violence to any person with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal, malt, or potatoes, in any market or other place; or shall beat, wound, or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal, malt, or potatoes, whilst on the way to or from any city, market town, or other place, with intent to stop the conveyance of the same; every such offender may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding three calendar months: provided always, that no person, who shall be punished for any such offence by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

Assaults with intent to prevent the sale or purchase of grain.

33. That where any person shall be convicted on any indictment for an assault, whether with or without battery and wounding, or either of them, such person may, if the court shall so think fit, in addition to the judgment which shall be considered proper for the offence, be ordered and adjudged to pay to the prosecutor his actual and necessary costs and expenses of prosecution, and such moderate allowance for the loss of time as the

On conviction for assault, court may order payment of prosecutor's costs.

10 G. 4, c. 34.

court shall, by affidavit or other inquiry and examination, ascertain to be reasonable; and unless the sum so awarded shall be sooner paid, to be imprisoned for any time not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

Payment may be enforced by distress of offender's goods.

34. Provided always, and be it enacted, that it shall and may be lawful for the court, by warrant under hand and seal, to order that such sum as shall be so awarded shall be levied by distress and sale of the goods and chattels of the offender, and paid to the person prosecuting, and that the surplus (if any) arising from such sale shall be paid to the owner; and in case such sum shall be so levied, the imprisonment awarded until payment of such sum shall thereupon cease.

Prosecutor a competent witness.

35. That the power hereby given to award such compensation as aforesaid shall not prevent any prosecutor from being a competent witness on any indictment.

Summary punishment for common assaults.

36. And whereas it is expedient that a summary power of punishing persons for common assaults and batteries should be provided, under the limitations hereinafter mentioned; be it therefore enacted, that when any person shall unlawfully assault or beat any other person, it shall be lawful for two justices of the peace, upon complaint of the party aggrieved, to hear and determine such offence; and the offender, upon conviction thereof before them, shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of five pounds; which fine shall be paid to the treasurer or other proper officer of the infirmary of the county, city, town, or place wherein such conviction shall take place, or in case there shall not be any infirmary therein, then to the treasurer or other proper officer of such other public charity therein as such justices shall direct; and if such fine as shall be awarded by the justices, together with costs (if ordered), shall not be paid, either immediately after the conviction, or within such period as the said justices shall, at the time of the conviction, appoint, it shall be lawful for them to commit the offender to the common gaol or house of correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid; but if the justices, upon the hearing of any such case of assault or battery, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred.

Such certificate or conviction shall be a bar to any other proceedings.

37. That if any person, against whom any such complaint shall have been preferred for any common assault or battery, shall have obtained such certificate as aforesaid, or having been convicted, shall have paid the whole amount adjudged to be paid

such conviction, or shall have suffered the imprisonment for non-payment thereof; in every such case he shall be released from all further or other proceedings, civil or criminal, in the same cause.

10 G. 4, c. 34.

Provided always, and be it enacted, that in case the justices shall find the assault or battery complained of to have been occasioned by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for prosecution by indictment, they shall abstain from any adjournment thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of this act: provided also, that nothing herein contained shall authorize any justices of the peace to hear and determine any case of assault or battery, in which any question shall arise as to the title of any lands, tenements, or hereditaments, or any interest therein, or accruing thereupon, or as to any bankruptcy or insolvency, or any execution under the process of any court of law.

These provisions not to apply to aggravated assaults.

That if any master of a merchant vessel shall, during his absence abroad, force any man on shore, or wilfully leave him behind any of his majesty's colonies or elsewhere, or shall refuse to bring home with him again all such of the men whom he carried with him as are in a condition to return when he shall next be ready to proceed on his homeward-bound voyage; every such master shall be guilty of a misdemeanor, and being lawfully convicted thereof, shall be imprisoned for such term as the court shall think fit: and all such offenders may be prosecuted by indictment or by information, at the suit of his majesty's attorney general, in the court of King's Bench, and may be alleged in the indictment or information to have been committed in the city of Dublin; and the said court is hereby authorized to issue one or more commissions, if necessary, for the examination of witnesses abroad; and the depositions taken under such commissions shall be received in evidence on the trial of every such indictment or information.

Punishment of master of merchant vessel forcing a seaman on shore, or refusing to bring him home.

Mode of trial &c.

That every accessory before the fact to any felony punishable under this act, for whom no punishment has been hereinbefore provided, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years: and every accessory after the fact to any felony punishable under this act, for whom no punishment has been hereinbefore provided, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years: and every person who shall counsel, aid, or abet the commission of any misdemeanor punishable under this act, shall be liable to be proceeded against and punished as a principal offender.

Punishment of accessories not before provided for.

That all indictable offences mentioned in this act, which

Offences

10 G. 4, c. 34. shall be committed within the jurisdiction of the Admiralty of Ireland, shall be deemed to be offences of the same nature liable to the same punishments, as if they had been committed upon the land in Ireland; and may be dealt with, inquired, tried, and determined in the same manner as any other offence committed within the jurisdiction of the Admiralty of Ireland, provided always, that nothing herein contained shall affect any of the laws relating to the government of his Majesty's land or naval forces.

against this act committed at sea.

Provision for offences punishable under this act by summary conviction.

42. And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this act, be enacted, that where any person shall be charged on the oath of a credible witness, before any justice of the peace, with an offence, the justice may summons the person charged to appear before any two justices of the peace, at a time and place named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon the person by delivering the same to him) the justices may proceed to hear and determine the same *ex parte*, or may issue their warrant for apprehending such person and bringing him before them; or the justice, before whom the charge is made, may (if he shall so think fit) issue such warrant in the first instance, without any previous summons.

Limitation of summary proceedings.

43. Provided always, and be it enacted, that the prosecution for every offence punishable on summary conviction by virtue of this act, shall be commenced within three calendar months after the commission of the offence, and not otherwise.

Form of conviction.

44. That the justices, before whom any person shall be summarily convicted of any offence against this act, may cause a certificate of conviction to be drawn up in the following form of words, or any other form of words to the same effect, as the case shall require; (that is to say,)

'Be it remembered, that on the _____ day of _____ in the _____
'our Lord _____ at _____ in the county of _____
'ing, division, liberty, city &c., as the case may be], A. O. is convicted before us [naming the justices], two of his Majesty's justices of the peace for the said county [or riding &c.], for that he said A. O. did [specify the offence, and the time and place when and where the same was committed, as the case may be]; and we the said justices adjudge the said A. O. guilty of the said offence, to be imprisoned in the _____, and there keep hard labour for the space of _____, [or, we adjudge the said A. O. guilty of the said offence, to forfeit and pay the sum of _____] [here insert the amount of the fine imposed], and also to pay the sum of _____, and in default of immediate payment of the said sums, to be imprisoned for the space of _____, unless the said sums shall be sooner paid; [or, and we order that the said sums shall be paid by the said A. O. before the _____ day of _____]; and we direct that the said sum of _____ [i. e. the amount of the fine] shall be paid to _____, and we order that the said sum of _____ for costs, shall be paid to [the party aggrieved.] Given under our hands the day and year above mentioned.'

No certiorari &c.

45. That no such conviction shall be quashed for any defect in form, or be removed by certiorari or otherwise into any of his Majesty's superior courts of record; and no warrant of removal shall be held void by reason of any defect therein, provided

her punishment, upon conviction on any indictment or
for such offence, as any persons are by law liable to,
ing any constable in the execution of the duties of his

vi.) That every penalty and forfeiture for any offence
act shall be paid to such hospital, infirmary, or other
institution situate within the limits of the jurisdiction
sitting justices, as such convicting justices may direct ;
on shall, by reason of the application of any such pe-
nalty as aforesaid, be deemed an incompetent wit-
ness of any offence against this act.

Disposal of
penalties.

Not to affect
competency
of witnesses.

Will. 4, c. 78, (b) s. 81.—That in case any person or
shall resist or make forcible opposition to any person
employed in the execution of this act, or shall
surveyor or deputy surveyor, collector, super-
visor, contractor, or peace officer, in the execution of
any other act for the making or repairing of high roads ;
make or attempt to make any rescue of goods distrained
in virtue of this or any other such act ; or if any con-
stable shall refuse or neglect to execute any
warrant issued by any justice of the peace pursuant to any
act created ; every such person offending therein,
if not convicted thereof before any two justices of the peace
sitting, by the oath of one credible witness, shall for
such offence forfeit any sum not exceeding ten pounds, nor
forty shillings, at the discretion of such justices ; and
if the same shall not be paid, such justices are hereby em-
powered to require to commit such offender to any gaol, house of
correction, for any time not exceeding three months,
until the said forfeiture shall be paid.

Assaulting
persons in
execution of
road acts,
rescuing
goods dis-
trained &c.

SECTION 4.

Abduction.

Forcible abduction of women.

10 Geo. 4, c. 34, s. 22.—That if any person take or carry away any woman or girl against her intent that such person or any other person shall her; every such offender, and every accessory be such offences, shall be guilty of felony, and by thereof, shall suffer death as a felon; and every the fact to such offence shall be guilty of felony, victed thereof, shall be liable to be transported to for life, or for any term not less than seven years, soned, with or without hard labour, for any term three years.

Abduction of an unmarried girl under 18 years of age.

23. That when any unmarried girl under the years shall have any interest, whether legal or equitable or future, absolute, conditional, or contingent, personal estate, or shall be an heiress presumptive to any one having such interest; if any person shall allure, take, or convey away, or cause to be all conveyed away, such girl out of the possession and will of her father or mother, or of any other person lawful care or charge of her, and shall contract her, or shall defile her; every such offender shall misdemeanor, and being convicted thereof, shall such imprisonment, not exceeding the term of the court shall award; and shall be incapable of estate or interest, legal or equitable, in any property of such girl; and such property shall, conviction, be vested, from the time of such marriage trustees as the lord chancellor, lord keeper, or co the custody of the great seal in Ireland shall appoint and separate use of such girl, in the like manner marriage had not taken place.

Abduction of an unmarried girl under sixteen.

24. That if any person shall unlawfully take, taken, any unmarried girl under the age of sixteen the possession and against the will of her father any other person having the lawful care or charge such offender shall be guilty of a misdemeanor, victed thereof, shall be liable to suffer such punishment or imprisonment, or by both, as the court shall award.

Child stealing.

25. That if any person shall maliciously, either fraud, lead or take away, or decoy or entice any child under the age of ten years, with intent parent or parents, or any other person having the charge of such child, of the possession of such intent to steal any article upon or about the person to whomsoever such article may belong; or if

with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away, or detained as hereinbefore mentioned; every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be transported beyond the seas for the term of seven years, or to be imprisoned with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years, and if a male to be once, twice or thrice publicly or privately whipped (if the court shall think fit,) in addition to such imprisonment: provided always, that no person who shall have claimed to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue hereof, on account of his getting possession of such child, or taking such child out of the possession of the mother, or any other person having the lawful charge thereof.

10 G. 4, c. 24.

Not to extend
to fathers of
illegitimate
children.

[Accessaries, p. 93.]

SECTION 5.

Sodomy.

1 Geo. 4, c. 34, s. 18.—That every person convicted of the unchastity crime of buggery, committed either with mankind or with any animal, shall suffer death as a felon.

[Accessaries, p. 93. Admiralty offences, *ibid.*]

SECTION 6.

Rape.

Geo. 4, c. 34, s. 19.—That every person convicted of the crime of rape, shall suffer death as a felon.

That if any person shall unlawfully and carnally know and abuse any girl under the age of ten years, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon; and if any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years and under the age of twelve years, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for such term as the court shall award.

Carnal know-
ledge of a girl
under 10;
death:
above 10, and
under 12; a
misdemeanor.

And whereas, upon trials for the crimes of buggery and of carnally abusing girls under the respective ages

What shall
be sufficient
proof of car-

10 G. 4, c. 34.

nal know-
ledge in the
four precedj
ing cases.

hereinbefore mentioned, offenders frequently escape by reason of the difficulty of the proof which has been required of the completion of these several crimes ; for remedy thereof, be it enacted, that it shall not be necessary in any of those cases to prove the actual emission of seed, in order to constitute a carnal knowledge; but that the carnal knowledge shall be deemed complete, upon proof of penetration only.

[Accessaries, p. 93. Admiralty offences, *ibid.*]



PART II.

OFFENCES OF A PUBLIC NATURE.

CHAPTER I.

OFFENCES AGAINST THE KING AND HIS GOVERNMENT.

SECTION 1.

High Treason.

Edw. 3, stat. 5, c. 2, Eng.—Item, whereas divers opinions
been before this time, in what case treason shall be said,
what not: (2) The king, at the request of the lords and
commons, hath made a declaration in the manner as
her followeth; that is to say, when a man doth compass or
advise the death of our lord the king, (a) or of our lady his
wife, or of their eldest son and heir: (3) or if a man do vio-
lently take the king's companion, or the king's eldest daughter unmar-
ried, or the wife of the king's eldest son and heir: (4) or if a
man do levy war against our lord the king in his realm, (b) or

What shall be
deemed trea-
son.

“ Letters of advice and correspondence of intelligence to
the enemy, to enable them to annoy this country, or defend them-
selves, written and sent in order to be delivered to the enemy,
though intercepted in their progress, overt acts of treason in
compassing the death of the king, and adhering to his enemies.
It is that, in the present case, the letters given in evidence had
not reached their intended destination, but were stopped in the
post. But that does not alter the case; for, were it other-
wise, no traitor could at any time be indicted, however mischiev-
ous the treason, unless the letters written by him, or attempted to
be sent by him, had gone to, and been received by the
person for whom they were intended; in which case the traitor
could never be laid hold of, until at least after the mischief was
done. Per Lord CLONMEL, C. J. (DOWNES and CHAMBERLAIN,
defendants) in *Rex v. Jackson*, *K. B. Ire. E. T.*, 1795.

Letters to an
enemy, inter-
cepted, are
overt acts of
treason in
compassing
the king's
death and ad-
hering to his
enemies.

“ As applicable to Ireland, to levy war against the king's
or conspiring to levy such war, or otherwise to depose the

35 Ed. 3, st. 5,
c. 2.

Petit treason.

New ques-
tions of trea-
son shall be
first decided
in parliament.

* Discover-
ment ou se-
cretment.
Rot. Parl. n.
17.

be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be probably attainted of open deed by the people of their condition. (5) And if a man counterfeit the king's great or privy seal, or his money. (6) And if a man bring false money into this realm counterfeit to the money of England, as the money called *Edinburgh*, or other like to the said money of England, knowing the money to be false to merchandize or make payment, in default of our said lord the king, and of his people. (7) And if a man be the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. (8) And it is to be understood that, in all cases above rehearsed, that ought to be judged treason, which extends to our lord the king and his royal majesty. (9) And of such treason the forfeiture of the escheats pertaineth to our lord, as well of the lands and tenements holden of other, as of himself. (10) And moreover, there is another manner of treason, that is to say, when a servant slayeth his master, or a wife her husband, or when a man, secular or religious, slayeth his prelate to whom he oweth faith and obedience. (11) And of such treason the escheat ought to pertain to every lord of his own fee. (12) And because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time, it is accorded, that if any other case, supposed treason, which is not above specified, doth happen before any justices, the justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the king and his parliament, whether it ought to be judged treason or other felony. (13) And if percase any man of this realm ride armed, covertly or secretly,* with men of arms against any other, to slay him, or rob him, or take him, or retain him till he hath made fine or ransom for to have his deliverance, it is not the mind of the king nor his council that in such case it shall be judged treason, but shall be judged felony or trespass, according to the laws of the land of old time used, and according as the case requireth. (14) And if in such case or other like, before this time, any justices have judged treason, and for this cause the lands and tenements have comen into the king's hands as forfeit, the chief lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the king's hands or in others, by gift or in other manner; (15) sav-

king, are overt acts of compassing his death, whether he be within this country or not, and therefore it is the unanimous opinion of the bench (Lord CARLETON, C. J., CROOKSHANK, J., M^r SMITH, B., GEORGE, B., and DAY, J.) that there is no distinction between the law of *England* and *Ireland* on this point," Per Lord CARLETON, C. J., *Rex v. Sheares*, July, 1798.

gs to our lord the king the year, and the waste, and the
 s. of chattels, which pertain to him in the cases above
 (16) And that the writs of scire facias be granted in
 e against the land tenants, without other original, and
 llowing any protection in the said suit. (17) And that,
 ids which be in the king's hands, writs be granted to the
 f the counties where the lands be, to deliver them out of
 s hands without delay.

25 Ed. 3, st. 5,
 c. 2.

3, c. 21.—Whereas it is highly reasonable and agree-
 e nature of our excellent constitution, that persons pro-
 ur high treason under the statute of the twenty-fifth of
 the Third, should be allowed all proper means for de-
 their innocence: in order thereto, and for the better
 of the trials of all such persons, be it &c., that from
 the first day of August in this year, (1766,) all and
 ion and persons, who shall be accused and indicted for
 on under the said statute, shall have a true copy of the
 istment delivered to them or any of them, upon request,
 at least before he or they shall be tried for the same;
 o enable them, or any of them respectively, to advise
 sel thereon, to plead and make their defence; his or
 ney or attorneys, agent or agents, requiring the same,
 g the officer for such copy two shillings and six-pence,
 re.

Persons ac-
 cused under
 25 Edw. 3,
 may have a
 copy of the
 indictment.

t every such person so accused and indicted, arraigned
 or any such offence as aforesaid, shall be received and
 o make his and their full defence by counsel learned in
 nd the court, before whom such person or persons shall
 r any judge thereof, shall and is hereby authorized and
 mmediately upon his or their request, to assign to such
 persons such and so many counsel, not exceeding two
 , (as he or they shall desire,) to plead for, and assist
 n or persons in making their defence, any law or usage
 trary notwithstanding.

Two counsel
 shall be as-
 signed for de-
 fence, if de-
 sired.

. 3, c. 12, *Eng.*—Item, whereas the commons have
 l them of escheators, which, by colour of their office,
 l divers lands and tenements as forfeit to the king, for
 rmised in dead persons, which were never attainted
 in their lives; the king thereof hath good regard:
 cause he and his progenitors have been seised of the
 of wares, of all times, the king will not exclude himself
 ht, whereof he found his crown seised, and will con-
 ght of such forfeitures fallen in his time and in the
 father, in the manner as hath been used. (3) Never-
 his special grace, he will and granteth, that of such
 allen in the time of his grandfather and all his pro-
 ore, as soon as an inquest shall be thereof returned
 cery by the escheators, or other which have power to
 at the tenant shall not be put out of his possession, but
 rned by scire facias, to be at a certain day to answer

Lands shall
 not be for-
 feited for the
 treason of
 dead persons
 not attainted
 in their lives.

Ed. 3, c. 12.

to his scire facias, if he will. (4) And if any such forfeiture be now, or shall be seised, of the same time, that the king's hand shall be out thereof: (5) so always that, in all other cases of forfeiture for treason of dead persons not attainted or judged for their lives, their heirs nor their land tenants shall not be impeached nor challenged, nor of any other forfeiture, except the forfeitures in old time, judged, after the death of the person, by present men in eyre, or in the King's Bench, as of felons of themselves and other.

Rebelling, or conspiring against the lord lieutenant; high treason.

10 Hen. 7, c. 13.—Item, forasmuch as diverse persons have assembled with banners displayed against the lieutenant and deputy of the said land, supposing that it was not treason so to do, and many times the deputy hath bin put to reproch, and the common weal set in adventure; therefore it be ordayned and enacted by this present parliament, that whatsoever person or persons, from this dayforward, cause, assemble, or insurrection conspiracies, or in any wise procure or stirre Irishry or Englishry to make warre against our sovereign lord the king's authority, that is to say, his lieutenant, or deputy, or justice; or else, in any manner person procure or stir the Irishry to make warre upon the Englishry, be deemed traytor atteynt of high treason, in likewise as such assemble an insurrection had been levied against the king's own person.

28 Hen. 8, c. 7, (a) s. 1.—Where, in a parliament begun at London, in the realm of England, the third day of November, the xxi. year of the reign of our most dread sovereign lord king Henry the Eighth, king of England and of France, Defender of the Faith, Lord of Ireland, and supream head in earth of the Church of England; and from thence adjourned to Westminster, and by divers prorogations there holden and continued, it was and is enacted, amongst other things, in manner and form as followeth: Forasmuch as it is most necessary, both for common policie and dutie of subjects, above all things to prohibit, provide, restrain, and extinct all manner of shameful slaunders, perills, or imminent danger or dangers which might grow, happen, or rise to their sovereign lord the king, the queen, and their heyers, which, when they be heard, seen, or understood, cannot be but odible, and also abhorred of all those sorts that be true and loving subjects, if in any point they may doe or shall touch the king, his queen, their heyers, and successors, upon which dependeth the whole unitie and the universall weal of this realm; without providing wherefore, too great a stop of unreasonable libertie should be given to all cankred and trayterous hearts, workers and willers of the same; and also, the king's loving subjects should not declare unto their sovereign lord now being (which unto them hath been, and is most entirely both beloved and esteemed,) their undoubted sincerity and truth. Be it there-

for &c. that if any person or persons, after the first day of February next coming, doe maliciously wish, will, or desire, by words, or writing, or by craft imagin, invent, practise, or attempt, any bodily harm to be done or committed to the king's most royal person, the queen, or their heires apparent, or to deprive them or any of them, of the dignitie, title, or name of their royal estates; or slanderously and maliciously publish and pronounce, by express writing or words, that the king our sovereign should be heretick, schismatick, tyrant, infidell, or usurper of the crown; or rebelliously doth detain, keep, or withhold from our said sovereign lord, his heyers or successors, any of his or their fortresses, fortresses, or holds, within this realm, or any other the king's dominions or marches; or rebelliously detain, keep, or withhold from the king's said highness, his heyres or successors, any of his or their ships, ordnances, artillery, or other munitions or fortifications of war; and doe not humbly render and give up to our said sovereign lord, his heyres or successors, or to such persons as shall be deputed by them, such castles, fortresses, fortresses, holds, ships, ordnances, artillery, and other munitions and fortifications of war rebelliously kept or detained, within sixe days next after they shall be commanded by our said sovereign lord, his heyres and successors, by open proclamations under the great seale; that then every such person and persons so offending in any of the premisses, after the said first day of February, their aydors, counsailors, consentors, and abettors, being thereof lawfully convicted according to the laws and customes of this realm, shall be adjudged traditours; and that every such offence in any of the premisses that shall be committed or done after the said first day of February, shall be reputed, accepted, and adjudged high treason; and the offenders therein, and their aydors, consentors, counsailors, and abettors, being lawfully convict of any such offence as is aforesaid, shall have and suffer such pains of death and other penalties, as is limited and accustomed in cases of high treason.

3. That if any of the king's subjects, denizens, or other, doe commit or practise out of the limits of this realm, in any outward parts, anie such offences which by this act are made, or heretofore have bin made treason; that then such treasons, whatsoever they be, that shall so happen to be done or committed, shall be enquired and presented by the oaths of twelve good and lawful men, upon good and probable evidence and witness, in such shire and county of this realm, before such persons as it shall please the king's highness to appoint by commission under his great seal, in like manner and form as treasons committed within this realm have been used to be enquired of and presented; and that upon everie inditement and presentment founded and made of any such treasons, and certified into the King's Bench, like process and other circumstances shall be there had and made against the offenders, as if the same treasons so presented had lawfully found to be don and committed within the limits of this realm;

28 H. 8, c. 7.

Wishing
harm to the
king, queen
&c., pro-
nouncing the
king heretic
&c., detaining
fortresses
&c.; treason.

Trial of treasons committed without the realm.

28 H. 8, c. 7.



Traitors forfeit their lands.

and that all process of outlarie hereafter to be made ~~and~~ within this realm, against any offenders in treason, being ~~residents~~ or inhabited out of the limits of this realm, or in any ~~other~~ the parts beyond the sea, at the time of outlarie pronounced against them, shall be as good and effectual in the law, to ~~all~~ intents and purposes, as if such offenders had been ~~residents~~ dwelling within this realm, at the time of such process ~~and~~ outlarie pronounced.

4. That every offender and offenders, being lawfully ~~convicted~~ of any manner of high treasons, by presentments, confessions, ~~and~~ dict, or process of outlarie, according to the due course ~~and~~ custom of the common law of this realm, shall lose and ~~forfeit~~ to the king's highness, his heyres and successors, all such ~~lands~~ tenements, and hereditaments, which any such offender or ~~offenders~~ shall have of any estate of inheritance in use or possession ~~by~~ by any right, title, or meanes, within the realm of England ~~and~~ elsewhere within any the king's dominions, at the time of ~~such~~ such treason committed or any time after; saving to every ~~person~~ person or persons, their heyres and successors, other than the ~~offenders~~ offenders in any treasons, their heyres and successors, and such ~~person~~ son and persons, as claim to any their uses, all such right, ~~title~~ and intresses, possessions, leases, rents, offices, and other ~~profits~~ profits which they shall have at the day of committing such treason, or at any time afore, in as large and ample maner as if this ~~act~~ had never been had or made.

This act, made in England, confirmed in Ireland.

5. Considering that this estatute, made in the realm of England, is most beneficial, and expedient to have due execution within the king's land and dominion of Ireland, especially in respect of the high rebellion here lately committed, and that the odible infamies against the king and queen, in the same act ~~and~~ pressed, and other offences, abuses, and abominations there ~~mentioned~~ mentioned principally, have been promulged, pronounced, done, ~~and~~ attempted within this said land; be it therefore established, ~~and~~ dayned, and enacted, by authority of this present parliament, that the aforesaid estatute and ordainance, and every thing and things therein contained, be established, confirmed, excepted, ~~deemed~~ judged, and taken for a good and right law, within this king's land and dominion of Ireland, and to be as good, effectual, ~~and~~ of the same strength, qualitie, effect, force, and vertue to ~~all~~ intents and purposes within the said land, as the same is ~~ought~~ to be in the realm of England.

16 Rich. 2, c. 5, Eng.—[Recites the ancient custom of the realm, for all persons to sue in the King's courts, to recover the right of presenting to benefices; and that the bishop of Rome had interfered with the bishops of England, in making institution, pursuant to the sentence of such courts. It recites also, the intention of the bishop of Rome to translate prelates, or remove them from the kingdom, at his pleasure, and the inconvenience and injury resulting therefrom.]

6. And so the crown of England, which hath been so free at all times, that it had been in no earthly subjection, but immediately

God, in all things touching the regalty of the same
d to none other, should be submitted to the Pope, and
nd statutes of the realm by him defeated and avoided
, in perpetual destruction of the sovereignty of the
rd, his crown, his regalty, and of all his realm, which
f.

16 R. 2, c. 5.

Moreover the commons aforesaid say, that the said
tempted be clearly against the king's crown and his
nd approved of the time of all his progenitors ;
ey and all the liege commons of the same realm will
our said lord the king, and his said crown, and his
is cases aforesaid, and in all other cases attempted
, his crown, and his regalty in all points, to live and to
Moreover they pray the king, and him require by way
at he would examine all the lords in the parliament,
tual as temporal, severally, and all the states of the
how they think of the cases aforesaid, which be so
at the king's crown, and in derogation of his regalty.
y will stand in the same cases with our lord the
olding the rights of the said crown and regalty.
pon the lords temporal so demanded, have answered
himself, that the cases aforesaid be clearly in dero-
e king's crown, and of his regalty, as it is well
ath been of a long time known, and that they will
same crown and regalty in these cases specially,
er cases which shall be attempted against the same
egalty, in all points, with all their power. (4) And
was demanded of the lords spiritual there being, and
rs of others being absent, their advice and will in all
which lords, that is to say, the archbishops, bishops,
lates, being in the said parliament severally examin-
protestations, that it is not their mind to deny nor
e bishop of Rome may not excommunicate bishops,
may make translation of prelates after the law of
; answered and said, that if any executions of pro-
in the king's court (as before), be made by any, and
xcommunication to be made against any bishops of
any other of the king's liege people, for that they
ecution of such commandments ; and that if any
such translations be made of any prelates of the
which prelates be very profitable and necessary to
l the king, and to his said realm, or that the sage
s counsel, without his assent and against his will,
nd carried out of the realm, so that the substance
of the realm may be consumed, that the same is
ing and his crown, as it is contained in the petition
!. (5) And likewise the same procurators, every
lf examined upon the said matters, have answered
the name, and for their lords, as the said bishops

1 R. 2, c. 3.

Premunire,
to purchase
bulls &c., or
to bring them
within the
realm.

Offenders
against this
act incur the
penalties of a
premunire.


have said and answered, and that the said lords spiritual and ought to be with the king in these cases, in lawfully maintaining of his crown, and in all other causes touching his crown and his regality, as they be bound by their allegiance.

Whereupon our said lord the king, by the assent aforesaid, at the request of his said commons, hath ordained and established, that if any purchase or pursue, or cause to be purchased or pursued, in the court of Rome or elsewhere, by any such translations, processers, and sentences of excommunications, or instruments, or any other things whatsoever which touch the king, against him, his crown, and his regality, or his realm, as is aforesaid, and they which bring within the realm, or receive, or make thereof notification, or any other execution whatsoever, within the same realm or without, that they, notaries, procurators, maintainors, abettors, fautors, and counsellors, shall be put out of the king's protection, (7) and their lands and tenements, goods and chattels, forfeit to our lord the king; (8) and that they be attached by their bodies, if they may be found, and brought before the king and his council there to answer to the cases aforesaid; (9) or that process be made against them by *premunire facias*, in manner as is ordained in other statutes of provisors; (10) and other writs do sue in any other court, in derogation of the regality of our lord the king.

28 Hen. 8, c. 19, (a) s. 14.—That if any person or persons, subject or resident within this realm, or within any the king's dominions, at any time hereafter, sue to the court of Rome, the see of Rome, or to any person claiming to have his authority by the same, for any license, faculty, dispensation, or other thing or things contrarie to this act; or put in execution any license, faculty, or dispensation, or any other thing or things hereafter obtained from Rome, or the see of Rome, or from any claiming authority by the same, for any of the causes above mentioned in this act, or for any other causes that may be granted by authority of this act; or attempt or doe any thing or things contrary to this act; or maintain, allow, admit, or obey any manner of process, excommunications, interdictions, or any other proceeding from Rome, of what name or nature soever it be, to the obstruction or let of the execution of this act, or of any thing or thing to be done by reason of the said act; that then every such person or persons so doing, offending, and being thereof convicted, their ayders, counsellors, and abettors, shall incur, and be put into the payne, losse, and penaltie, comprized and specified in the act of provision and *premunire*, made in the sixteenth year of your most noble progenitor, King Richard the Second, against such as sued to the court of Rome against your crown and dignitie royall.

(a) Entitled, "*The act of faculties.*"

majestie's most royall person; or maliciously give
 writing, deeds, print, or act, whereby the king's
 heyres or successors, or any of them, might be
 interrupted of the crown of this realme of Ireland, or
 style, or title thereof; or by writing, deed, print, or
 or doe, or cause to be procured or done, any thing
 the prejudice, slander, disturbance, or derogation
 majestie, his heyres or successors, in, of, or for the
 realm of Ireland, or in, of, or for the name,
 thereof; whereby his majestie, his heyres, or suc-
 of them, might be disturbed or interrupted in
 style, or title of inheritance of, in, or to the crowne
 of Ireland, or of the name, style, title, or dignitie of
 hat then, every such person and persons, of what
 , or condition they be, subject or resiant within the
 Ireland, and their aydors, counsaylours, maintaynors,
 therein, and everie of them, for everie such offence,
 igned high traitors; and every such offence shall be
 deemed high treason; and the offendours, their
 sailors, maintaynors, and abettours therein, and every
 lawfully convicted of any such offence, by pre-
 dict, confession, or proofes, according to the
 laws of this said land of Ireland, shall suffer paines
 cases of high treason; and also shall lose and for-
 king's highnesse, and to his heyres, kings of this
 land, all such his mannors, landes, tenements, rents,
 waities, and hereditaments which they had in pos-
 sess, and were sole seized in their own right, of, by,
 or meanes, or in any other person or persons, had
 any estate of inheritance, at the day of any such

3^d H. 3, c. 1.  their heyres, successours, and assigns, and to every of them, other than such persons as shall be so convicted or attainted, their heyres and successours, and all other clayming to their use, all such right, title, use, interest, possession, condition, rents, fees, offices, annuities, commons, and profites, which they, or any of them, shall happen to have, in, to, or upon any such manors, lands, tenements, rents, reversions, services, annuities, and hereditaments, which so shall happen to be lost and forfeited, by reason and occasion of any of the treasons or offences above rehearsed, any time before the said treasons or offences committed or done.

Maintaining
or defending
foreign au-
thority.

2 Eliz. c. 1, s. 12.—And for the more sure observation of this act, and the utter extinguishment of all forrein and usurped power and authoritie, may it please your highness, that it may be further enacted by &c., that if any person or persons dwelling or inhabiting within this your realm, of what estate, dignitie, or degree soever he or they be, after the end of thirtie days next after the determination of this session of this present parliament, shall by writing, printing, teaching, preaching, express words, deed or act, advisedly, maliciously, and directly affirm, hold, stand with, set forth, maintain, and defend the authority, preheminance, power, or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate whatsoever, heretofore claymed, used, or usurped within this realm; or shall advisedly, maliciously, and directly put in ure or execute any thing for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, preheminance, or authority, or any part thereof; that then every such person and persons so doing and offending, their abbettours, aydours, procurers, and counsellors, being thereof lawfully convicted and attainted according to the due order and course of the common lawes of this realme, for his or their first offence, shall forfeit and lose unto your highnesse, your heyres, and successors, all his and their goods and chattels, as well real as personal; and if any such person so convicted or attainted, shall not have or be worth, of his proper goods and chattels, to the value of twentie poundes, at the time of such his conviction or attayndour, that then every such person so convicted and attaynted, over and besides the forfeiture of all his said goods and chattels, shall have and suffer imprisonment by the space of one whole year, without bayl or maineprise; and that also all and every the benefices, prebends, and other ecclesiastical promotions and dignities whatsoever, of everie spirituall person so offending, and being attainted, shall, immediately after such attaindour, bee utterly voyd to all intentes and purposes, as though the incumbent thereof were dead; and that the patron and donour of every such benefice, prebend, spiritual promotion, and dignity shall and may lawfully present unto the same, or give the same in such manner and form as if the said incumbent

Punishment.

Richard the Second; and if any such offendour or at any time after the said second conviction and at the third time commit and doe the said offences, or in manner and form aforesaid, and be thereof duly and attaynted as aforesaid, that then everie such offence shall be deemed and adjudged high treason, and the offendour and the offendours therein, being thereof lawfully indicted and attainted, according to the lawes of this Realme shall suffer paines of death, and other penalties, forfeitures, as in cases of high treason, by the lawes of

that no manner of person or persons shall bee molested or put to death for any the offences aforesaid, committed or perpetrated by preaching, teaching, or wordes, unless hee or shee be lawfully indicted within the space of one half year after his or their offences so committed; and in case any person or persons shall fortune to bee imprisoned for any of the offences committed by preaching, teaching, or wordes, and bee not thereof indicted within the space of one half year after his or their such offence so committed and done, the said person so imprisoned shall be set at libertie, and longer detained prisoner for any such cause or offence. s.) And if it shall happen that any peere of this Realme shall be indicted of and for any offence that is revived by this act; that then the same peere so being indicted, shall be put to answer to the indictment before such peeres of this Realme, of English birth, by the lord deputy, or governour or governours of this Realme, to be by commission appointed, under the broad seal, of the King, his heirs, or assigns, to be by him and their tryall by his and their peeres, and to have such like indement upon the same tryall of his

Offenders by words only, to be prosecuted within half a year.

Peers indicted, to be tried by peers.

2 Eliz. c. 1.

Two witnesses necessary to prove that the harbourer had knowledge of the offence.

Traitors shall forfeit their lands &c.; and the queen shall be deemed in possession, without office.

brought forth in person, face to face before the partie so arraigned, and there shall testifie and declare what they can say against the partie so arraigned, if he require the same.

19. Provided, and bee it further enacted by the authorities aforesaid, that if any person or persons shall hereafter happen to give any reliefe, ayd, or comfort, or in any wise be ayding, helping, or comforting to the person or persons of any that shall hereafter happen to bee an offendour in any matter or case of premunire or treason revived or made by this act; that then such reliefe, ayd, or comfort given, shall not be judged or taken to be any offence, unlesse there be two sufficient witnesses at the least, that can and will openly testifie and declare, that the person or persons that so gave such reliefe, ayd, or comfort, had notice and knowledge of such offence committed and done by the said offendor, at the time of such reliefe, ayd, or comfort, so to be given or ministered; any thing in this act conteyned, or any other matter or cause, to the contrary in anywise notwithstanding.

27 Eliz. c. 1, s. 9.—That all and every offendour and offendours, being hereafter lawfully convict of any maner of high treason by any act of parliament, presentment, confession, verdict, or proces of outlawry, according to the due course or custome of the common laws or statutes of this realm, shall lose and forfeit to the queen's majestie, her heyres and successours, as well all such rights, entries, and conditions, as also all such lands, tenements, and hereditaments, which any such offendour or offendours shall have of any estate of inheritance in use or possession, by any right, title, or meanes within this realm of Ireland, or elsewhere within any the dominions of the same realm, at the time of any such treason committed, or at any time after; and that every such attaindour, according to the course of the common laws or statutes of this realm, shall be of as good force, value, and effect as if it had been done by authority of parliament; and that the queen's majestie, her heyres and successours, shall be deemed and adjudged in actual and real possession of all such landes, tenements, uses, hereditaments, goods, chattels, and all other things of the offendour and offendours so attainted, without any office or inquisition to be found of the same; any law, statute, custom, or use, to the contrarie in anywise notwithstanding. Saving to every person and persons, their heyres and successors, (other than the offendours in any treasons, their heyres and successors, and such person and persons as claime to any of their uses,) all such rights, titles, interests, possessions, leases, rents, offices, and other profits, which they shall have at the day of the committing such treasons, hereafter to be committed, or at any time afore, in as large and ample manner as if this act had never been had or made.

2 Anne, c. 5, s. 1.—Forasmuch as the future security of your majesty's Protestant subjects of this kingdom doth (next under

God) depend upon the safety of your majesty's royal person (whom God long preserve to reign over us), and upon the succession in the Protestant line, as the same is limited by an act of parliament passed in England, intituled, "An act declaring the rights and liberties of the subject, and settling the succession of the crown;" and by one other act made in England in the twelfth year of the reign of his late majesty king William the third, of blessed memory, intituled, "An act for the further limitation of the crown, and better securing the rights and liberties of the subject;" by which it is enacted, "that the imperial crown and government of the kingdoms of England, France, and Ireland, and of the dominions thereunto belonging, with the royal state and dignity of the said realms, and all honors, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities to the same belonging and appertaining, should, after the decease of his said majesty, and of her then royal highness the princess Anne of Denmark (our most gracious sovereign lady queen Anne) without issue of her body, and for default of issue of her said majesty, and of his said majesty respectively, be, remain, and continue to the most excellent princess Sophia, electoress and duchess dowager of Hanover, daughter of the most excellent princess Elizabeth, late queen of Bohemia, daughter of our late sovereign lord king James the first of happy memory, and the heirs of her body, being Protestants;" and forasmuch as it most manifestly appears that the Papists of this kingdom, and other disaffected persons, do still entertain hopes of disappointing the said succession, as the same stands limited: for prevention whereof, be it enacted &c., that if any person or persons, at any time from and after the first day of February, in the year of our Lord God, (1703,) shall endeavour to deprive or hinder any person who shall be the next in succession to the crown for the time being, according to the limitations in the before recited acts mentioned, from succeeding after the decease of her majesty (whom God long preserve), to the imperial crown of the realm of England, and the dominions and territories thereunto belonging, according to the limitations in the before mentioned acts: (that is to say) such issue of her majesty's body as shall from time to time be next in succession to the crown, if it shall please God to bless her majesty with issue; and during the time her sacred majesty shall have no issue, the princess Sophia, electoress and duchess dowager of Hanover, and the heirs male of her body, being Protestants; and after the decease of the said princess Sophia, the next in succession to the crown for the time being, according to the limitation of the said acts; and the same maliciously, advisedly, and directly shall attempt by any overt act or deed; every such offence shall be adjudged high treason, and the offender or offenders therein, their abettors, procurers, and comforters, knowing the said offence to be done, being thereof convicted or attainted according to the laws and statutes of this realm, shall be

2 Anne, c. 5.

1 W. & M.
sess. 2, c. 2,
Eng.12 & 13 W. 3.
c. 2, Eng.High treason,
to disappoint
the succession
as settled.

2 Anne, c. 5.

Offenders beyond sea, to be tried as by commission appointed.

Treasons &c. committed abroad shall be tried in K. B., or before commissioners, and in shire appointed by the king.

Peers to be tried by peers.

Women convicted of high treason, shall be hanged.

deemed and adjudged traytors, and shall suffer pains of death, and all losses and forfeitures, as in cases of high treason.

2. That if any person or persons, being a native of this realm, shall offend contrary to this act in any parts beyond the seas, or on the high sea; that every such offender shall and may be tried in such county in this kingdom, as her majesty, her heirs and successors, shall by her or their commission, under the great seal of this kingdom, nominate, limit, and appoint.

33 Geo. 3, c. 45, s. 1.—Whereas it is necessary to make some further provision for the trial of persons accused of treason, misprisions, and concealments of treason, committed out of this realm; be it enacted &c., that all manner of offences, being already made and declared, or hereafter to be made or declared by any of the laws and statutes of this realm, to be treasons, misprisions of treasons, or concealments of treasons, and done, perpetrated, or committed, or hereafter to be done, perpetrated, or committed by any person or persons out of this realm, and out of his majesty's dominions, shall be from henceforth inquired of, heard, and determined before the king's justices of his bench for pleas to be holden before himself, by good and lawful men of the same shire, where the said bench shall sit and be kept; or else before such commissioners, and in such shire of the realm as shall be assigned by the king's majesty's commission, and by good and lawful men of the same shire, in like manner and form, to all intents and purposes, as if such treasons, misprisions of treasons, or concealments of treasons, had been done, perpetrated, or committed within the same shire where they shall be so inquired of, heard and determined as is aforesaid.

2. That if any of the peers of this realm shall happen to be indicted of any such treasons, or other offences aforesaid, by the authority of this act; that then, after such indictment, they shall have their trial by their peers, in such like manner and form as hath heretofore been accustomed.

36 Geo. 3, c. 31, (a) s. 1.—Whereas it is expedient that the judgment which has been required by law to be given and awarded against any woman or women in the cases of high treason, or of petit treason, should be no longer continued; be it therefore &c., that from and after the first day of June, (1796), the judgment to be given and awarded against any woman or women convicted of the crime of high treason, or of the crime of petit treason, or of abetting, procuring, or counselling any petit treason, shall not be, that such woman or women shall be severally drawn to the place of execution, and be there burned to death, but that such woman or women, being so convicted as aforesaid, shall be severally drawn to the place of execution, and be there hanged

(a) So much of this act as relates to petit treason, has been repealed by the 10 Geo. 4, c. 34.

by the neck, until she or they be severally dead, any law or usage to the contrary thereof in any wise notwithstanding. 36 G. 3, c. 31.

4. That whenever any woman or women shall be convicted of the crime of high treason, or of the crime of petit treason, or of aiding, procuring, or counselling any petit treason, and judgment shall be given thereon, according to the directions of this act, then and in every such case, such woman or women, being so attainted of such crimes respectively, shall be subject and liable to such and the like forfeitures and corruption of blood, as they severally would have been, in case they had been severally attainted of the like crimes, before the passing of this act.

Women so attainted, shall be liable to like forfeitures and corruption of blood, as formerly.

54 Geo. 3, c. 146, s. 1.—Whereas in certain cases of high treason, as the law now stands, the sentence or judgment required by law to be pronounced or awarded against persons convicted or adjudged guilty of the said crime, in such cases is, that they should be drawn on an hurdle to the place of execution, and there be hanged by the neck, but not until they are dead, but that they should be taken down again, and that when they are yet alive, their bowels should be taken out and burnt before their faces, and that afterwards their heads should be severed from their bodies, and their bodies be divided into four quarters, and their heads and quarters to be at the king's disposal; and whereas it is expedient, in the said cases of high treason, to alter the sentence or judgment now required by law; be it therefore &c., that in all cases of high treason, in which, as the law now stands, the sentence or judgment obtained by law is as aforesaid, the sentence or judgment to be pronounced or awarded, from and after the passing of this act, against any person convicted or adjudged guilty, shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck, until such person be dead; and that afterwards the head shall be severed from the body of such person, and the body, divided into four quarters, shall be disposed of as his majesty and his successors shall think fit.

Form of sentence in case of high treason.

2. That in case his majesty or his successors shall so think fit, his majesty or his successors, after such sentence or judgment shall be pronounced or awarded, may, by warrant under his or their sign manual, countersigned by one of his majesty's principal secretaries of state, declare it to be his or their will and pleasure, and may direct and order that such person as aforesaid shall not be drawn, but shall be taken in such manner as in the said warrant shall be expressed, to the place of execution, and that such person shall not be there hanged by the neck, but that, instead thereof, the head shall there be severed from the body of such person whilst alive; and in such warrant may direct and order how and in what manner the body, head, and quarters of such person shall be disposed of; and it shall be lawful for the sheriff or other person or persons to whom such warrant shall be addressed, and whom it shall concern, to carry the same into execution accordingly.

His majesty may alter sentence.

1 & 2 Geo. 4, c.

24.



1 & 2 Geo. 4, c. 24.—Whereas, by an act passed in the seventh year of his late majesty king William the Third, and intituled, “An act for regulating of trials in cases of treason and misprision of treason,” it is, amongst other things, enacted, that no person or persons whatsoever shall be indicted, tried, or attainted of high treason, whereby any corruption of blood or shall be made to any such offender or offenders, or to any heir or heirs of any such offender or offenders, or of misprision of such treason, but by and upon the oaths and testimony of lawful witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same treason; unless the party indicted, and arraigned, tried, shall willingly, without violence, and in open court, confess the same; (or shall stand mute, or refuse to plead,) or, in case of high treason, shall peremptorily challenge above the number of *thirty-five*(a) of the jury. Provided always, that any person or persons, being indicted for any such treasons, or misprisions of such treasons, may be outlawed, and thereby attainted of or for any such offences of treason, or misprision of treason; and in cases of such high treasons, when, by the law, after such outlawry, the party outlawed may come and be tried, he shall, upon such trial, have the benefit of the said act. And it is therein further enacted and declared, that if two or more distinct treasons, of divers heads or kinds, shall be alleged in one bill of indictment, one witness produced to prove one of the said treasons, and another witness produced to prove another of the said treasons, shall not be deemed or taken to be two witnesses to the same treason within the meaning of the said act. And whereas in the same aforesaid act it is further enacted, that no person or persons whatsoever shall be indicted or prosecuted for any treason, or misprision of treason, that shall be committed or done within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, unless the same indictment be found by a grand jury, within three years next after the treason or offences done or committed. And whereas the above recited enactments and provisions of the said act, do not extend to that part of the United Kingdom called Ireland; and it is expedient, just, and reasonable, that they should be extended to that part of the United Kingdom; be it therefore &c., that from and after the first day of January, in the year of our Lord (1822,) the above recited enactments and provisions of the aforesaid act passed in the reign of King William, and intituled, “An act for regulating of trials in cases of treason and misprision of treason,” shall extend and be construed to extend to, and be in force, to all intents and purposes whatsoever, in that part of the United Kingdom called Ireland; any law, statute, or usage to the contrary notwithstanding.

& 8 W. 3, c.
Eng., as
recited, ex-
tended to
Ireland.

(a) By the 9 Geo. 4, c. 54, s. 9, the right of peremptory challenge, in cases of treason, is limited to twenty.

21 Provided always, and be it &c., that in all cases of high treason, in compassing and imagining the death of the king, and of the person of such treason, where the overt act or overt acts of such treason, which shall be alleged in the indictment for such offence, shall be assassination or killing of the king, or any direct attempt against his life, or any direct attempt against his person, whereby his life may be endangered, or his person may suffer bodily harm; the person or persons charged with such offence, in that part of the United Kingdom called Ireland, may be indicted, arraigned, tried, and attainted in the same manner, and according to the same course and order of trial in every respect, and upon the like evidence, as if such person or persons were charged with murder.

1 & 2 G. 4, c.
24.

When the overt act is assassination &c., the offender may be tried as in cases of murder.

SECTION 2.

Coining.

13 Geo. 3, c. 139, s. 3.—That if any person, from and after the passing of this act, shall, within any part of the said United Kingdom, make, coin, or counterfeit any kind of coin, not the legal coin of this realm, nor ordered by the royal proclamation of his majesty, his heirs or successors, to be deemed and taken for current money of this realm, or any part thereof, but resembling, or made with intent to resemble any copper coin, or any other coin made of any metal or mixed metals of less value than silver coin of such foreign prince, state, or country respectively, or to pass as such foreign coin; then, every person so offending shall be deemed and taken to be guilty of a misdemeanor and breach of the peace; and being thereof convicted according to law, shall, for the first offence, be imprisoned for any time not exceeding one year, and for the second offence, be transported to any of his majesty's colonies or plantations for the term of seven years.


Counterfeiting foreign copper coin; misdemeanor.

That no person, against whom any bill of indictment shall be found at any assizes or sessions of the peace, for any offence against this act, shall be entitled to traverse the same to any subsequent assizes or sessions; but the court, at which such bill of indictment shall be found, shall forthwith proceed to try the person or persons against whom the same shall be found, unless he or they shall shew good cause, to be allowed by the court, why the trial should be postponed.

Persons indicted shall not traverse *in pro.*

That if any person shall be convicted of any offence against this act, and shall afterwards be guilty of the like offence in any county, city, town, or place; the clerk of the assize, clerk of the peace, or town clerk for the county, city, town, or place in which such former conviction shall have been had, shall, at the request of the prosecutor, or any other on his majesty's behalf,

Certificate of former conviction shall be evidence, on trial for second offence.

43 G. 3, c. 139.  certify the same by a transcript in few words, containing the effect and tenor of such conviction ; for which certificate two shillings and sixpence, and no more, shall be paid ; and such certificate being produced in court, and the hand-writing of such clerk of assize, clerk of the peace, or town clerk thereto being proved, shall be sufficient evidence of such former conviction.

Penalty for having more than five pieces of such counterfeit copper, or other coin.

6. That if any person or persons shall have in his, her, or their custody, without lawful excuse, any greater number of pieces than five pieces of false or counterfeit coin, of any kind or kinds, resembling or made with intent to resemble any such copper or other coin as aforesaid ; every such person being thereof convicted upon the oath of one or more credible witness or witnesses, before one of his majesty's justices of the peace, shall forfeit and lose all such false and counterfeit coin, which shall be cut in pieces and destroyed by order of such justice ; and shall, for every such offence, forfeit and pay any sum of money not exceeding forty shillings, nor less than ten shillings, for every such piece of false or counterfeit coin which shall be found in the custody of such person ; one moiety to the informer or informers, and the other moiety to the poor of the parish where such offence shall be committed ; and in case any such penalty shall not be forthwith paid, it shall be lawful for any such justice to commit the person who shall have been adjudged to pay the same, to the common gaol or house of correction, there to be kept to hard labour for the space of three calendar months, or until such penalty shall be paid.

Houses of suspected persons may be searched, and counterfeit coin seized.

7. That it shall and may be lawful to and for any one justice of the peace, on complaint made before him upon the oath of one credible person, that there is just cause to suspect that any one or more person or persons is, or are, or hath, or have been concerned in making or counterfeiting any such false or counterfeited foreign coin as aforesaid, by warrant under the hand of such justice, to cause the dwelling-house, room, workshop, out-house, or other building, yard, garden, or other place belonging to such suspected person or persons, or where any such person or persons shall be suspected to carry on any such making or counterfeiting, to be searched for any such false or counterfeit coin, or for tools or implements for coining such false or counterfeit coins, or for materials for making or coining the same : and if any such false or counterfeit coin, or any such tools or implements, or any such materials for making any such false or counterfeit coin, shall be found in any place so searched ; or if any such tools, implements, or materials shall be found in the custody or possession of any person or persons whomsoever, not having the same by some lawful authority ; it shall and may be lawful to and for any person or persons whatsoever discovering the same, to seize, and he and they are hereby authorized and required to seize such false or counterfeit coin, tools, implements, and materials, and to carry the same forthwith to a justice of the peace of the county, city, town, or place, where the

same shall be seized; who shall cause the same to be secured, and produced in evidence against any person or persons who shall or may be prosecuted for any of the offences aforesaid, in some court of justice proper for the determination thereof; and after such time as any such false or counterfeit coin, or any such tools, implements, or materials shall have been produced in evidence as aforesaid, as well so much and such parts thereof as shall have been so produced, as every other part thereof so seized and not made use of in evidence, shall forthwith, by order of the court where such offender or offenders shall be tried, or by order of some justice of the peace, in case there shall be no such trial, be defaced or destroyed, or otherwise disposed of as such court or such justice shall direct.

43 G. 3, c. 139.

8. That no proceedings to be had, touching the conviction of any offender against this act, before any justice of the peace, shall be quashed for want of form, or be removed by writ of certiorari, or any other writ or process whatsoever, into any of his majesty's courts of record at Westminster or Dublin.

Proceedings
not to be
quashed or
removed.

2 Will. 4, c. 34, (a) s. 1.—Whereas the offence of counterfeiting the coin, as well as certain other offences relating to the coin, are now, by virtue of several statutes, punishable with death; and whereas it is expedient to abolish the punishment of death in all such cases, and to repeal the several statutes against offences relating to the coin, in order that the provisions thereof may be amended and consolidated into one act; be it therefore,

&c. &c. (b) Provided always, that if any person shall, after the commencement of this act, be convicted of any offence against any of the said acts, committed before or upon the said last day of April, and such offence shall have been punishable with death by virtue of any of the said acts; in every such case, the person convicted of such offence shall not suffer the punishment of death, but shall, in lieu thereof, be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding four years.

Offences committed previous to the repeal of old acts, may be tried under them after repeal; but the punishment not to be capital.

3. That if any person shall falsely make or counterfeit any coin resembling, (c) or apparently intended to resemble or pass for,

Counterfeiting the gold or silver coin.

(a) Entitled, “*An act for consolidating and amending the laws against offences relating to the coin.*”

(b) By the enacting part of this section, several acts and parts of acts are repealed, after the 30th of April, 1832, except so far as they repeal other acts, or are in force out of the United Kingdom; and except as to offences committed before, or upon that day. By s. 2, the present act takes effect on the 1st of May, 1832.

(c) *Rex v. Smith, Armagh Spr. Ass. 1832.* The prisoner was indicted at common law for procuring two pieces of base coin,

2 W. 4, c. 34.

Offence when
deemed com-
plete.

Colouring
counterfeit
coin &c.,
with intent to
make it pass
for gold or
silver coin ;

colouring or
altering ge-
nuine coin,
with intent to
make it pass
for a higher
coin ; felony.

Base coin,—
what shall
be deemed a
sufficient re-
semblance
to the current
coin.

any of the king's current gold or silver coin ; ever shall, in England and Ireland, be guilty of felony and of a high crime and offence ; and being convicted shall be liable, at the discretion of the court, to be sent beyond the seas for life or for any term not less than ten years or to be imprisoned for any term not exceeding five years ; and every such offence shall be deemed to be complete when the counterfeit coin so made or counterfeited shall not be in circulation, or the counterfeiting thereof shall not be completed.

4. That if any person shall gild or silver, or wash or materials capable of producing the colour of silver, wash, colour, or case over, any coin which is or appears to be the king's current gold or silver coin ; or if any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, any piece of silver or copper, or of coarse gold or of any metal or mixture of metals respectively of the size and figure to be coined, and with intent that the same shall be coined into false and counterfeit coin respectively intended to resemble or pass for, any of the king's current gold or silver coin ; or if any person shall gild, or wash or materials capable of producing the colour of silver, wash, colour, or case over, any of the king's current silver coin, or in any manner alter such coin, with intent to make the same resemble or pass for any of the king's current gold or silver coin ; or if any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, any of the king's current gold or silver coin, or in any manner alter such coin, with intent

made and counterfeited to the resemblance of a shilling, and to have been at one time current ; but they were then much worn and rubbed, so that the edges, where the copper distinctly appeared, were not observed by day-light. Sixty-nine other pieces of base coin were also found in the prisoner's possession. *G. Robt.* contended that the indictment was not sufficient. *C.B.*, took a note of the objection, but allowed the case to go on. The prisoner having been convicted, the question for the consideration of the twelve judges ; who inspected the coins, were unanimously of opinion that they sufficiently resembled the current coin, to warrant the

ble or past for any of the king's current gold or silver
such offender shall, in England and Ireland, be
ny, and in Scotland of a high crime and offence;
onvicted thereof, shall be liable, at the discretion of
be transported beyond the seas for life, or for any
than seven years, or to be imprisoned for any term
g four years.

2 W. 4, c. '34.

if any person shall impair, diminish, or lighten any current gold or silver coin, with intent to make the same altered, diminished, or lightened, pass for the king's or silver coin; every such offender shall, in England be guilty of felony, and in Scotland of a high crime and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned for any term not exceeding three years.

Impairing the gold or silver coin, with intent &c.; felony.

any person shall buy, sell, receive, pay, or put off, y, sell, receive, pay, or put off, any false or coun- resembling, or apparently intended to resemble or of the king's current gold or silver coin, at or for or value than the same by its denomination imports, l or counterfeited for ; or if any person shall import ted Kingdom from beyond the seas, any false or oin, resembling, or apparently intended to resemble ay of the king's current gold or silver coin, knowing e false or counterfeit ; every such offender shall, and Ireland, be guilty of felony, and in Scotland of and offence ; and being convicted thereof, shall be : discretion of the court, to be transported beyond ife, or for any term not less than seven years, or to d for any term not exceeding four years.

Buying or selling &c. counterfeit gold or silver coin for less than its denomination imports, or importing counterfeit coin; felony.

any person shall tender, utter, (a) or put off any counterfeit coin, resembling, or apparently intended to

Uttering counterfeit gold or silver coin.

Roper, Monaghan Sum. Ass. 1832. The prisoner was stealing a half-crown piece from *William Purcell*, uttering a base half-crown piece to *William Purcell*.

**Indictment
for larceny of
coin, not to
be joined with
indictment
for uttering.**

arose out of the same transaction, which is com-
a by the name of "*ringing the changes.*" Sir
or the crown, applied to have the prisoner given
a both indictments together, saying at the same
difference of opinion and practice had existed among
a that subject. SMITH, B., put him to his election.
having been tried and convicted of the larceny, was
charge for the *uttering*, in order to an acquittal; no
the prosecution being offered. The jury however,
expectation, found him guilty on this indictment also.
suggested that a *nolle prosequi* might be entered
e done at any time before the verdict was recorded

A nolle prosequi may be entered at any time before the verdict is recorded.

2 W. 4, c. 34.

Uttering, accompanied by possession of other counterfeit coin, or followed by a second uttering.

Second offence of uttering, after a previous conviction; felony.

Having three or more pieces of counterfeit gold or silver coin in possession &c., with intent &c.; misdemeanor.

Second offence; felony.

resemble or pass for, any of the king's current gold coin, knowing the same to be false or counterfeit; offender shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence; and being convicted thereof, shall be imprisoned for any term not exceeding one year; and if any person shall tender, utter, or put off false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit; and such person shall, at the time of such tendering, uttering, or putting off, have in his possession, besides the false or counterfeit tendered, uttered, or put off, one or more piece or pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, or shall, either on the day of such tendering, uttering, or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any more or other false or counterfeit resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit; every such offender shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence; and being convicted thereof, shall be imprisoned for any term not exceeding two years. And if any person shall have been convicted of any of the misdemeanors, or crimes and offences, hereinbefore mentioned, shall afterwards commit any of the said misdemeanors, or crimes and offences, such person shall, in England and Ireland, be deemed guilty of felony, and in Scotland of a high crime and offence; and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding five years.

8. That if any person shall have in his custody or possession three or more pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same; every such offender shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence; and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding three years; and if any person so convicted shall afterwards commit the like misdemeanor, or crime and offence, such person shall, in England and

and *Rex v. Hempstead*, (*Russ. and Ry.* 344,) was cited. SMITH, B. having some doubts as to the propriety of this course requested that the matter might be mentioned to BUSHE, C. who was sitting in the civil court; and, with the concurrence of both the learned judges, the *nolle prosequi* was afterwards entered.

shall, be deemed guilty of felony, and in Scotland of a high crime and offence; and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years.

2 W. 4, c. 34.

9. That where any person* shall have been convicted of any offence against this act, shall afterwards be indicted for any offence against this act committed subsequent to such conviction, a copy of the previous indictment and conviction, purporting to be signed and certified as a true copy, by the clerk of the court, or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the previous indictment and conviction, without proof of the signature or official character of the person appearing to have signed and certified the same; and for every such copy a fee of six shillings and eight-pence, and no more, shall be demanded or taken; and if any such clerk, officer, or deputy shall certify or utter as true, any false copy of any indictment or conviction for any offence against this act, knowing the same to be false; or if any person other than such clerk, officer, or deputy, shall sign or certify any copy of any such indictment or conviction, as such clerk, officer, or deputy, or shall utter any copy thereof, with a false or counterfeit signature thereto, knowing the same to be false or counterfeit; every such offender shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence; and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years or less than seven years, or to be imprisoned for any term not exceeding two years.

What shall be sufficient evidence of a conviction for a previous offence against this act.

* Sic.

Granting false certificate; felony.

10. That if any person shall knowingly, and without lawful authority (the proof of which authority shall lie on the party accused), make or mend, or begin or proceed to make or mend, or buy or sell, or shall, knowingly and without lawful excuse (the proof of which excuse shall lie on the party accused), have in his custody or possession any puncheon, counter-puncheon, machine, stamp, die, pattern, or mould, in or upon which there shall be made or impressed, or which will make or impress, or which shall be intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any of the king's present gold or silver coin, or any part or parts of both or either of such sides; or if any person shall, without lawful authority (the proof whereof shall lie on the party accused), make or mend, or begin or proceed to make or mend, or buy or sell, or shall, without lawful excuse (the proof whereof shall lie on the party accused), have in his custody or possession any edger, gaging tool, collar, instrument, or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures, apparently resembling those on the edges

Making, mending, or having possession of any coining tools; felony.

2 W. 4, c. 34.

of any of the king's current gold or silver coin knowing the same to be so adapted and intended or if any person shall, without lawful authority, to aforesaid, make or mend, or begin or proceed to make or buy or sell, or shall, without lawful excuse, to aforesaid, have in his custody or possession, any press, or any cutting engine for cutting, by force of any other contrivance, round blanks out of gold, or metal, such person knowing such press to be a press or knowing such engine to have been used or to be used for or in order to the counterfeiting of any current gold or silver coin; every such offender in England and Ireland, be guilty of felony, and in Scotland crime and offence; and being convicted thereof, shall, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years.

Conveying tools or monies out of the mint, without authority; felony.

11. That if any person shall, without lawful proof whereof shall lie upon the party accused), convey out of any of his majesty's mints, any punch, puncheon, matrix, stamp, die, pattern, mould, tool, collar, instrument, press, or engine, used or about the coining of coin, or any useful part of any of the matters aforesaid, or any coin, bullion, metal, or metals; every such offender shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not less than seven years, or to be imprisoned for any term not exceeding four years.

Various offences relating to the copper coin.

12. That if any person shall falsely make or counterfeit any coin resembling, or apparently intended to resemble any of the king's current copper coin; or if any person shall knowingly, and without lawful authority (the proof of which shall lie on the party accused), make or mend, or proceed to make or mend, or buy or sell, or shall knowingly, and without lawful excuse (the proof of which excuse shall lie on the party accused), have in his custody or possession any tool, or engine, adapted and intended for the counterfeiting of any of the king's current copper coin; or if any person shall receive, pay, or put off, or offer to buy, sell, receive, or put off, any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the king's current copper coin, at or for a lower rate or value than the same when first minted or coined, or was coined or counterfeited for lawful use, every such offender shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence; and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding seven years, or to be imprisoned for any term not exceeding four years.

Any person shall tender, utter, or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the king's current copper coin, knowing the same to be false or counterfeit, or shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the king's current copper coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same; every such offender shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence; and being convicted thereof, shall be liable to be imprisoned for any term not exceeding one year.

2 W. 4, c. 34.

13. That where any gold or silver coin shall be tendered to any person, who shall suspect any piece or pieces thereof to be diminished otherwise than by reasonable wearing, or to be counterfeit, it shall be lawful for such person to cut, break, or deface such piece or pieces; and if any piece so cut, broken, or defaced, shall appear to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and appear to be lawful coin, the person cutting, breaking, or defacing the same is hereby required to receive the same at the rate it was coined for; and if any dispute shall arise, whether a piece so cut, broken, or defaced, be diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in summary manner by any justice of the peace, who is hereby empowered to examine upon oath, as well the parties as any other person, in order to the decision of such dispute; and the tellers, the receipt of his majesty's exchequer, and their deputies and clerks, and the receivers general of every branch of his majesty's revenue, are hereby required to cut, break, or deface, or cause to be cut, broken, or defaced, every piece of counterfeit or unlawfully-diminished gold or silver coin, which shall be tendered to him in payment of any part of his majesty's revenue.

Coin suspected to be diminished or counterfeit may be cut by any person to whom it is tendered.

Who shall bear the loss.

4. That if any person shall find or discover, in any place whatever, or in the possession of any person having the same without lawful excuse, any false or counterfeit coin resembling or apparently intended to resemble or pass for, any of the king's current gold, silver, or copper coin, or any instrument, tool, or engine whatsoever, adapted and intended for the counterfeiting of such coin, it shall be lawful for the person so finding or discovering, and he is hereby required to seize the same, and to bring the same forthwith before some justice of the peace: and if it shall be proved on the oath of a credible witness, before any justice of the peace, that there is reasonable cause to suspect that any person has been concerned in counterfeiting the king's current gold, silver, or copper coin, or has in his custody or possession any such counterfeit coin, or any instrument, tool, or engine whatsoever, adapted and intended for the counterfeiting of any such coin, it shall be lawful for such justice, by

Provision for the discovery, seizure, and disposal of counterfeit coin and coining tools.

2 W. 4, c. 31.

longing to, or occupied by himself or not, and whether such matter shall be so had for his own use or benefit, or for that of another; every such person shall be deemed and taken to have such matter in his custody or possession, within the meaning of this act.

SECTION 3.

Offences relating to the Election of Members of Parliament.

No meetings shall be held for elections, except for certain places.

40 Geo. 3, c. 29, (a) s. 3.—That in case of the summoning of a new parliament, or if the seat of any of the said counties, cities, or boroughs, or any of them, as the case may be, shall proceed to a new election; and that all the other towns, cities, corporations, or boroughs, other than the aforesaid, shall cease to elect representatives to serve in parliament; and no meeting shall at any time hereafter be summoned, called, convened, or held, for the purpose of electing any person or persons to serve, or act, or be considered as representative or representatives of any other place, town, city, corporation, or borough other than the aforesaid, or as representative or representatives of the freemen, freeholders, householders, or inhabitants thereof either in the parliament of the United Kingdom or elsewhere (unless it shall hereafter be otherwise provided by the parliament of the United Kingdom): and every person summoned, calling, or holding any such meeting, or assembly, or taking any part in any such election or pretended election, shall, being thereof duly convicted, incur and suffer the pains and penalties ordained and provided by the statute of provision and pardon made in the sixteenth year of the reign of Richard Second. (b)

Disturbing the poll, destroying

35 Geo. 3, c. 29, (c) s. 12.—That if any person or persons shall violently, riotously, or outrageously disturb or interrupt any election

(a) Entitled, "An act to regulate the mode by which the lords spiritual and temporal, and the commons to serve in the United Kingdom on the part of Ireland, shall be summoned and return to the said parliament."

(b) Ante, 104.

(c) This act has been repealed as to counties of cities and counties of towns, by the 4 Geo. 4, c. 55.

tion, or the proceedings of the poll ; such disturbance, riot, or misbehaviour shall not be any excuse to the returning officer or officers, nor afford him or them any pretence for closing the poll, or making a return ; but the court shall thereupon be adjourned for some convenient time, as the occasion may require, and if necessary, shall be further continued by adjournment from time to time, until such disturbance shall have ceased, when such returning officer shall again proceed in taking the poll ; and every person who shall be, by due course of law, convicted of having violently, riotously, or outrageously disturbed the court, or otherwise misbehaved, so as forcibly to interrupt the proceeding of the poll, or of having wilfully effaced, obliterated, torn, altered, or destroyed the whole or any part of the poll-book of the returning officer or officers, or any deputy, whereon any thing relative to the said election shall have been entered, or of having forcibly or fraudulently taken or secreted the same, or any part thereof, or the writ or precept for holding such election, shall be adjudged guilty of felony, and be transported for seven years to some part of his majesty's dominions out of Europe, or be imprisoned for any time not more than seven years, at the discretion of the judge or judges who shall try such person.

35 G. 3, c. 29

poll books
&c. ; felony.

53. That if any person shall poll at any election by virtue of a freehold which he had registered, and of which he shall not be in possession at the time of his polling, he shall (if thereof convicted) be imprisoned in the common gaol of the county, for the space of six months.

Voting from
freehold not
in possession

54. That if any person, not being a registered freeholder, shall take upon him the name of a freeholder entered upon the registry, or pretend to be the person so registered, and shall be convicted thereof, he shall be sentenced to stand in the pillory on three successive market days, in the town where such election has been held, and be imprisoned in the common gaol of the county where he shall have been so convicted, for the space of six months.


Personating
registered
freeholder.

72, (pars.) That all and every person and persons who shall falsely and wilfully swear or affirm, contrary to the true intent and meaning of this act, being thereof indicted and convicted, shall suffer such pains, penalties, and disabilities, as persons convicted of wilful and corrupt perjury ought by law to suffer ; and that any person claiming to be a voter as an inhabitant of such borough, who shall be guilty of perjury in registering his inhabitancy and right of voting, or pretended right, in such borough, without being really and bona fide a resident inhabitant thereof, according to the form of the oath aforesaid prescribed, and shall be thereof convicted and condemned, and suffer the pains and penalties aforesaid, shall for ever be incapable of giving any vote at any election of a member to serve in parliament.

False swear-
ing by elect-
ors &c. ; pe-
jury.

74. That if any person, sheriff, or other returning officer, his or their deputy or deputies, who shall take any oath or affirma-

False swear-
ing by sheri-
&c. ; perjury

35 G. 3, c. 29.  tion in pursuance of this act, or shall wilfully swear or falsely therein ; he shall be guilty of wilful and corrupt perjury or false affirming, and shall and may be prosecuted for the same by indictment or otherwise, as perjury, in a court of record, and now be prosecuted ; and being thereof convicted, he shall and suffer the pains and penalties which by law are, or may be inflicted, in cases of wilful and corrupt perjury.

Writ of summons need not be alleged or proved.

75, (*pars.*) That it shall be sufficient, in any indictment for any offence contrary to this act, to allege the particular offence, and that the defendant is guilty, without mentioning the writ of summons to parliament, or the return thereof ; and that upon the trial of any issue in any such action, information, or indictment, the plaintiff, informer, or prosecutor shall not be obliged to prove the writ of summons to parliament, or the return thereof, or any warrant to the sheriff grounded upon such writ of summons.

Offenders discovering others, indemnified.

77. That if any person, (except a returning officer, clerk of the peace, or treasurer,) offending against this act, shall, within the space of twelve calendar months next after such offence committed, discover any other person or persons guilty of a like offence, so that such person or persons be thereupon convicted, such person so discovering shall be indemnified, and exempted, and saved harmless from all penalties and disabilities which he shall have incurred by any such offence.

Prosecutions to be commenced within one year.

78. Provided always, that every action, information, indictment, or prosecution, grounded upon this act, be commenced within one year after the offence shall be committed.

Neglecting to deliver writ, misdemeanor.

53 Geo. 3, c. 89, s. 6.—That every person concerned in the transmitting or delivery of any such writ as aforeaid(a), who shall wilfully neglect or delay to deliver or transmit any such writ, or accept any fee, or do any other matter or thing in violation of this act, shall be guilty of a misdemeanor, and may, upon any conviction, upon any indictment or information in his majesty's court of King's Bench, be fined and imprisoned, at the discretion of the court, for such misdemeanor.

Poll books to be delivered to the clerk of the peace &c.

60 Geo. 3, & 1 Geo. 4, c. 11, s. 3.—That in every case in which a poll shall take place as aforeaid, the returning officer shall, within twenty-one days of the final close of such poll, deliver all the poll books of such election to the clerk of the peace for such county, county of a city, county of a town, if such elec-

(a) By s. 1, it is enacted that, in all cases of the summoning of a new parliament, or of occasional vacancies, the writs for the election of members shall be given to the messenger of the great seal, who shall deliver them (except where the election is for London, or places adjacent,) to the postmaster general or his deputy, to be by him forthwith forwarded to the post towns adjacent to the places appointed by the several sheriffs for holding their offices ; the deputy postmasters of which shall deliver them without delay.

shall be held for a county, county of a city, county of a town, or if in any other place, then and in such case, to the officer who has the custody of the records of such place, verifying upon oath (which oath any justice of the peace for such county, county of a city, county of a town or place, is hereby empowered to administer,) that the poll books, which he delivers in, are the original poll books of such election, upon which a return was founded, and that, from the final close of the poll to the time he delivers in the same, there has not been any obliteration, erasure, addition, or alteration made therein; and such poll books shall be carefully kept amongst the records of such county, county of a city, county of a town or place; and the production of such poll books by such clerk of the peace or officer, or his deputy, shall be deemed sufficient evidence of the authenticity thereof, unless the same shall be disproved.

60 G. 3, & 1
G. 4, c. 11.

Evidence.

25. That every returning officer, who shall be, by due course of law, convicted of having acted corruptly or partially in the execution of his duty, as returning officer at any election of a member or members to serve in parliament, shall be adjudged guilty of a high misdemeanor, and shall be imprisoned for a period not exceeding three years; and such person, so convicted, is hereby declared to be for ever incapable of holding any office or situation, civil or military, under the crown.

Returning officer acting corruptly; imprisonment &c.

36. That every person who shall poll a second time, or offer to poll a second time, at the same election, or who shall personate any other person, or attempt to personate any other person, for the purpose of polling at such election, shall be guilty of a misdemeanor; and, upon being thereof convicted in any of his Majesty's courts of records in Dublin, shall be imprisoned for any term not more than two years, at the discretion of the judge or judges who shall try such person.

Polling twice or personating electors; imprisonment.

4 Geo. 4, c. 55, (a) s. 70.—That if any person or persons shall violently, riotously, or outrageously disturb or interrupt any election, or the proceedings of the poll; such disturbance, riot, or misbehaviour shall not be any excuse to the returning officer or officers, nor afford him or them any pretence for closing the poll or making a return; but the court shall thereupon be adjourned to some convenient time, as the occasion may require; and if necessary, shall be further continued by adjournment from time to time, until such disturbance shall have ceased; when such returning officer shall again proceed in taking the poll: and every person who shall be, by due course of law, convicted of having violently, riotously, or outrageously disturbed the court, or otherwise misbehaved, so as forcibly to interrupt the proceedings of

Riots &c., no excuse for closing the poll, or making a return.

Disturbing the election, or effacing the books; felony.

(a) Entitled, "An act to consolidate and amend the several acts now in force, so far as the same relate to the election and return of members to serve in parliament, for counties of cities and counties towns in Ireland."

4 G. 4, c. 55. the poll, or of having wilfully effaced, obliterated, torn, altered, or destroyed the whole or any part of the poll books of the returning officer or officers, or any deputy, whereon any thing relative to the said election shall have been entered, or of having forcibly or fraudulently taken or secreted the same, or any part thereof, or the writ or precept for holding such election, shall be adjudged guilty of felony, and be transported for seven years.

Returning officer acting corruptly, imprisonment &c.

75. That every returning officer, who shall be by due course of law convicted of having acted corruptly or partially in the execution of his duty as returning officer, at any election of a member or members to serve in parliament, for any county of a city or county of a town, shall be adjudged guilty of high misdemeanor, and shall be imprisoned for a period not exceeding three years; and such person, so convicted, is hereby declared to be for ever incapable of holding any office or situation, civil or military, under the crown.

Polling twice, or personating electors; imprisonment.

82. That every person who shall poll a second time, or offer to poll a second time, at the same election for any county of a city or county of a town, or who shall personate any other person, for the purpose of polling at such election, shall be guilty of a misdemeanor; and upon being thereof convicted, shall be imprisoned for any term not more than two years, at the discretion of the judge or judges who shall try such person.

Voting from a freehold not in possession; imprisonment.

84. That if any person shall poll at any election, by virtue of a freehold which he had registered, and of which he shall not be in possession at the time of his polling, he shall (if thereof convicted) be imprisoned in the common gaol of the county for the space of six calendar months.

Writ of summons to parliament, need not be alleged or proved upon the trial.

86, (*pars.*) That it shall be sufficient, in any indictment for any offence contrary to this act, to allege the particular offence, and that the defendant is guilty, without mentioning the writ of summons to parliament, or the return thereof: and that upon trial of any issue in any such [action, information, or] indictment, the [plaintiff, informer, or] prosecutor, shall not be obliged to prove the writ of summons to parliament, or the return thereof, or any warrant to the sheriff, grounded upon such writ of summons.

Clerk of the peace, altering registry books, neglecting his duty at elections; imprisonment.

40 Geo. 3, c. 80, s. 6, (*pars.*)—If any clerk of the peace shall destroy, or wilfully or negligently permit to be destroyed, or shall maliciously, fraudulently, corruptly, or wilfully make or permit, or suffer to be made, any alteration, erasure, obliteration, or interlineation in any such book of registry, or neglect to attend, by himself or his sufficient deputy, at any election for a member or members to serve in parliament for any county, town, or city, with all and singular the books of the registry of the freeholders therein, and the affidavits on which the same are formed, and to remain there during the whole continuance of such election; he shall, upon being duly convicted thereof, be adjudged guilty of a misdemeanor; and shall be imprisoned for three years, or suffer such other punishment as the court shall think fit, and shall

incapable of holding the office of clerk of the peace. 49 G. 3, c. 89.

4, c. 88, (a) s. 40.—That if any person shall forge the signature of any judge, chairman, barrister, or peace, to any order, certificate, or instrument in or to be an order or certificate within this act, or of any person to any oath or affirmation within this act knowingly utter or publish as true and genuine, or a forged or counterfeited order, certificate, instrument, or affirmation; every person so offending shall be guilty of felony; and shall be liable, at the discretion of the court before whom he shall be tried, to be transported for the term of seven years, or to be imprisoned, with hard labour, for any term not exceeding three

Forging certificate of registry.

If any person shall, in any oath or affirmation to be made in this act, wilfully and corruptly swear or affirm falsely; he shall be deemed guilty of perjury, and be liable to the same penalties, and punishments as any person is now liable to for wilful and corrupt perjury.

False swearing; perjury.

SECTION 4.

Sedition.

c. 29, (b) s. 1.—Whereas the election or appointment of any assembly, purporting to represent the people, or any number of the people of this realm, under pretence of presenting petitions, complaints, remonstrances, or other addresses to the king, or to both or either of parliament, for alteration of matters established by law, or in dress of alleged grievances in church and state, or in use of to serve the ends of factious and seditious purposes, or in violation of the public peace, and the great and dangerous disturbance of riot, tumult, and disorder; be it enacted by &c., that all assemblies, committees, or other persons elected, or in any other manner constituted to represent, or assuming or exercising authority to represent the people of this realm, or any number of the people of the same, or the people of

All assemblies, elected or assuming to represent the people, except the

1, “ *An act to amend the representation of the people and commonly called the REFORM ACT.*”

2, “ *An act to prevent the election or appointment of assemblies, under pretence of preparing or presenting petitions, or other addresses to his majesty, or the parliament.*”
called the CONVENTION ACT.

33 G. 3, c. 29. any province, county, city, town, or other district within the same, under pretence of petitioning for, or in any other manner procuring an alteration of matters established by law in church or state, save and except the knights, citizens, and burgesses elected to serve in the parliament thereof, and save and except the houses of convocation duly summoned by the king's writ, ~~unlawful assemblies~~; and it shall and may be lawful for any mayor, sheriff, justice of the peace, or other peace officer, and they are hereby respectively authorized and required, within ~~the~~ and their respective jurisdictions, to disperse all such ~~unlawful~~ assemblies, and if resisted, to enter into the same, and to apprehend all persons offending in that behalf.

commons, and houses of convocation, are unlawful assemblies; and may be dispersed.

Giving notice of the election of such representatives, or attending thereat; misdemeanor.

2. That if any person shall give or publish, or cause or procure to be given or published, any written or other notice of election to be holden, or of any manner of appointment of any person or persons to be the representative or representatives, delegate or delegates, or to act by any other name or description whatever, as representative or representatives, delegate or delegates of the inhabitants, or of any description of the inhabitants of any province, county, city, town, or other district within this kingdom, at any such assembly; or if any person shall attend and vote at such election or appointment, or by any other means vote or act in the choice or appointment of such representatives or delegates, or other persons to act as such; every person who shall be guilty of any of the said offences respectively, being thereof convicted by due course of law, shall be deemed guilty of an high misdemeanor.

Not to affect elections by bodies corporate.

3. Provided always, that nothing herein contained shall extend or be construed to extend to, or affect elections to be made by bodies corporate, according to the charters and usage of such bodies corporate respectively.

Not to prevent the right to petition his majesty, or parliament.

4. Provided also, that nothing herein contained shall be construed in any manner to prevent or impede the undoubted right of his majesty's subjects of this realm to petition his majesty, or both houses, or either house of parliament, for redress of any public or private grievance(a).

A charge that A. B. was appointed a representative, is sustained by proof of his appointment as a delegate.

The pretence, mentioned in the act need not be a false pretence.

Sec. 4 of this act does not

(a) *Rex v. Sheridan, K. B. Ire. M. T. 1811.* The prisoner was indicted for attending at a certain meeting held in *Liffey-street*, in the city of *Dublin*, on the 31st day of *July*, 1811, and then and there assisting and voting in the appointment of *Thomas Kirwan*, to be one of the representatives of the Roman Catholic inhabitants of a district in the city of *Dublin*, commonly called the parish of *Saint Mary*, at a general committee to be thereafter held for the purpose, and under the pretence of petitioning parliament for a redress of certain grievances. It was stated in the indictment, and fully made out in evidence, that the committee was intended to be composed of ten persons from each county of *Ireland*, and five persons from each parish in the city of *Dublin*, as dele-

10 G. 4, c. 1, (a) s. 1.—Whereas an association hath for
 the time past existed in Ireland, calling itself, or which hath

10 G. 4, c. 1.

gates of the whole Catholic body. It also appeared that the Roman Catholic parish of Saint Mary, as registered, differed from the Protestant parish, and in fact consisted of the Protestant parishes of St. Mary, St. Thomas, and St. George; and that part of the latter parish was in the county of Dublin. Counsel for the defendant contended that the charges could not be sustained; first, because the committee was stated in the indictment to be a *representative* body, while, in point of fact, they were only *delegates*, entrusted to speak the sentiments of those who sent them; secondly, that the "pretence" mentioned in the indictment must be taken to be a "false pretence," while, upon the evidence, it appeared that the preparing a petition to parliament was to be the real and only object of the committee. Both objections were overruled by the court.

In the case of *Thomas Kirwan*, who was tried upon a similar charge in the court of King's Bench (*H. T. 1812*), the above objections were again urged by the defendant's counsel; and also, thirdly, that there was a material variance between the indictment and the evidence; since, in the former, the parish of Saint Mary was laid as in the city of Dublin, while it appeared that a portion of it was in the county of Dublin: fourthly, that the business of petitioning, being the single object of the committee, the legality of that proceeding was secured by the saving in the fourth section, although entered on by a *representative* body. The Court, in summing up, said, "The character of the assembly or its members is not made to depend on the number of its objects, or the generality or particularity of the trust reposed in them, but on the original constitution of the assembly, if it be elected or appointed to represent any portion of the people, and has for its object the procuring such alteration of the laws as the act mentions, though it holds out to the world, and that truly, no other means or intent of effecting that object but a petition; it is a representative assembly; and its members are representatives, within the meaning of the act; and with respect to the distinction taken between *delegates* and *representatives*, the act seems to use these terms as synonymous. It is immaterial by what names they shall designate themselves; if, in fact, they are to act as representatives in a representative assembly, they fall within the act, and may be described as representatives." The jury found the traverser guilty, and, in reply to an inquiry of the court, declared it to be their opinion that the election of delegates in *Liffey-street* intended to include the Roman Catholic

save the right of petitioning parliament, if exercised by a representative body. A statement that *A. B.* was representative of a district in *D.*, called *M.* held good, although there be a part of *M.* which is not in *D.*, it appearing that *A. B.* had no authority as to such part.

(a) Entitled, "An act for the suppression of dangerous associations or assemblies in Ireland."

19 G. 4, c. 1.

Catholic Association suppressed.

been usually called, "The Catholic Association," the acts and proceedings of which are dangerous to the public tranquillity, and inconsistent with the exercise of regular government; be it therefore enacted &c., that from and after the commencement of this act, the said association shall be, and the same is hereby utterly suppressed and prohibited; and every assembly or meeting thereof, or of any of the members thereof, as such meeting is hereby declared to be an unlawful assembly, and the persons present at the same shall be deemed guilty of a misdemeanor.(s)

SECTION 5.

Inciting to Mutiny and Foreign Enlistment.

Natural born subjects in French service, landing in this kingdom &c.; felony, death.

29 Geo. 2, c. 5, s. 1.—Whereas many of his majesty's subjects have been induced, contrary to their natural duty and allegiance, to serve as officers, soldiers, and mariners, under the French king; and have of late, in open defiance of the laws, resorted to this kingdom, with an intent to seduce others of his majesty's subjects into that service; which practice is highly prejudicial to the safety and welfare of this kingdom; for remedy whereof, be it &c., that every person, being a natural born subject of this kingdom, who now is, or hereafter shall be an officer, soldier, or mariner, in the service of the French king, who shall land, or attempt to land, or shall be found in Ireland, or shall be found on board any ship, vessel, or boat, being so on board with intent to land in this kingdom; and every person and persons, who shall, within this kingdom, knowingly aid, abet, conceal, comfort, or succour any such officer, soldier, or mariner returning into this kingdom, shall stand and be adjudged guilty of felony without benefit of the clergy; and shall suffer and forfeit, as persons attainted of felony by the laws of the land ought to suffer and forfeit.

Offences, where tried.

2. That any offence against this act may be tried, and the venue laid in any county in this kingdom.

37 Geo. 3, c. 40, (b) s. 1.—Whereas divers wicked and evil-disposed persons, by the publication of written or printed papers,

inhabitants of the Catholic parish of Saint Mary, in the city of Dublin only. The objection made on the part of the traverser, together with this finding of the jury, was afterwards laid before the judges, eleven of whom (MAYNE, J., absent) were of opinion that it was of no force.

(a) For the other enactments on the subject of "Sedition," *vide post*, "Libel."

(b) This act, which was at first temporary, and had expired, has been revived and perpetuated by the 57 Geo. 3, c. 7.

mur up any such person or persons to commit any act, or to make, or endeavour to make, any mutinous or to commit any traitorous or mutinous practice what- all. on being legally convicted of such offence, be ad- ily of felony; and shall suffer death as in cases of about benefit of clergy.

ided always, and be it enacted &c., that any offence against this act, whether committed on the high seas, this kingdom, shall and may be prosecuted and tried court of Oyer and Terminer, or gaol delivery, for any this kingdom, in such manner and form as if the said been therein committed.


ided always, and it is hereby declared and enacted, reon who shall be tried and acquitted, or convicted of e against this act, shall not be liable to be indicted, , or tried again for the same offence or fact, as high misprision of high treason; and that nothing in this ed shall be construed to extend to prevent any per- of any offence against this act, and who shall not be e same as an offence against this act, from being tried e as high treason, or misprision of high treason, in r, as if this act had not been made.

1, c. 69, s. 2.— And be it further declared and enacted, natural born subject of his majesty, his heirs and suc- out the leave or license of his majesty, his heirs or for that purpose first had and obtained, under the of his majesty, his heirs or successors, or signified ouncil, or by proclamation of his majesty, his heirs , shall take or accept, or shall agree to take or ac- litary commission, or shall otherwise enter into the ice as a commissioned or non-commissioned officer.

Offences com- mitted at sea, or in Ireland, may be tried at any court of Oyer and Terminer.

Persons tried under this act, not to be again tried for treason &c.; nor shall this act prevent persons not tried under it, from being tried for trea- son &c.

Enlisting, or engaging to enlist, with- out license, or inducing others to en- list in any foreign mili- tary or naval service; im- prisonment.

59 G. 3, c. 69.  appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used for any warlike purpose, in the service of, or for, or under, or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government, in or over any foreign country, colony, province, or part of any province or people; or if any natural born subject of his majesty shall, without such leave and license as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of, or for, or under, or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of, or for, or under, or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer, or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money, or pay, or reward shall have been, or shall be, in any or either of the cases aforesaid, actually paid to, or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place, belonging to, or subject to his majesty, shall hire, retain, engage or procure, or shall attempt or endeavour to hire, retain, engage or procure any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for, or under, or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for, or under, or in aid of any person or persons exercising, or assuming to exercise any powers of government as aforesaid, or to go, or to agree to go or embark from any part of his majesty's dominions, for the purpose or with the intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor; and, upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or *either of them*, at the discretion of the court before which such offender shall be convicted.

re otherwise enlisted into any military service as a com-
d or non-commissioned officer, or shall have enlisted or
himself to enlist, or shall have agreed to enlist or to en-
self to serve as a soldier, or shall have served, or having
shall, after the said first day of August, (1819), con-
serve in any warlike or military operation, either as an
r soldier, or in any other military capacity, or shall
cepted, or agreed to take or accept, any commission,
or appointment as an officer, or shall have enlisted
d himself to serve, or shall have served, or having so
all continue to serve as a sailor or marine, or shall have
ployed or engaged, or shall have served, or having so
hall, after the said first day of August, continue to serve
n board any ship or vessel of war, used or fitted out, or
l or intended for any warlike purpose; or shall have en-
r contracted, or agreed to go, or shall have gone to, or
o gone to, shall, after the said first day of August, con-
any foreign state, country, colony, province or part of a
, or to or in any place beyond the seas, unless such per-
ersons shall embark at, or proceed from some port or
thin the United Kingdom, or the islands of Jersey,
y, Alderney or Sark, with intent to serve as an officer,
sailor, or marine, contrary to the provisions of this act,
said first day of August, or shall embark or proceed
ne port or place out of the United Kingdom, or the
of Jersey, Guernsey, Alderney or Sark, with such intent
aid, after the said first day of November, or who shall,
ie passing of this act, and within the said United King-
the said islands. or before the first day of November.

39 G. 2, c. 29. shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was liable and subject to, before the passing of this act, and as person or persons would have been in, and been liable, subject to, in case this act and the said recited acts by this repealed(a), had not been passed or made.

Justices to issue warrants for the apprehension of offenders.

Where offences shall be tried.

Where offence committed out of U. K., a justice may issue warrant for apprehension of the offender.

4. That it shall and may be lawful for any justice of the peace, residing at or near to any port or place within the Kingdom of Great Britain and Ireland, where any offence punishable by this act as a misdemeanor shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace, before whom such offender shall be brought, to examine into the nature of the offence, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall be bailed, to the satisfaction of the said justice, to appear and answer to any information or indictment, to be preferred against him according to law, for the said offence: and that all such offences which shall be committed within that part of the United Kingdom called England, shall and may be proceeded against in his majesty's court of King's Bench at Westminster, or at the venue in such case laid at Westminster, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed: and that all such offences which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in his majesty's court of King's Bench at Dublin, and the venue be laid at Dublin, or at any assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed: and all such offences as shall be committed in Scotland, shall and may be prosecuted in the court of justiciary in Scotland, or in any other court competent to try criminal offences committed in Scotland: and where any offence made punishable by this act as a misdemeanor, shall be committed out of the said United Kingdom, it shall be lawful for any justice of the peace, residing near to the port or place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace, at such place; and it shall be lawful for the justice of the peace, before whom such offender shall be brought, to examine into the

(a) Viz., 9 Geo. 2, c. 30; and 29 Geo. 2, c. 17, and 11 Geo. 2, c. 7; and 19 Geo. 2, c. 7, Irish.

59 G. 3, c. 60.

of the offence upon oath, and to commit such person to gaol, to remain till delivered by due course of law, or otherwise hold such offender to bail, to answer for such offence in the superior court competent to try, and having jurisdiction to try criminal offences committed in such port or place: and all such offences committed at any place out of the said United Kingdom, shall and may be prosecuted and tried in any superior court of his majesty's dominions, competent to try, and having jurisdiction to try criminal offences committed at the place where such offence shall be committed.

That if any person within any part of the United Kingdom, or any part of his majesty's dominions beyond the seas, shall, without the leave and license of his majesty, for that purpose hire and obtained as aforesaid, equip, furnish, fit out or arm, or attempt or endeavour to equip, furnish, fit out or arm, or procure to be equipped, furnished, fitted out or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out or arming of any ship or vessel, with intent, or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising, or assuming to exercise any powers of government, in or over any foreign state, colony, province, or part of any province or people, as a transport or store ship, or with intent to cruise, or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising, or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom his majesty shall not then be at war; or shall, within the United Kingdom, or any of his majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to his majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid; every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel and furniture, together with all the materials, arms, ammunition and stores, which may belong to, or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of his majesty's customs or excise, or any officer of his majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of his majesty's customs or excise, and the officers of his majesty's navy, are empowered respec-

Unlicensed persons fitting out armed vessels to aid foreign powers, or issuing commissions for ships.

Punishment.

59 G. 3, c. 69. **tively to make seizures, under the laws of customs and excise under the laws of trade and navigation ; and that every such ship or vessel, with the tackle, apparel and furniture, together with all the materials, arms, ammunition and stores, which may belong to, or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts, as or vessels may be prosecuted and condemned, for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.**

Aiding the warlike equipment of foreign vessels.

8. That if any person, in any part of the United Kingdom of Great Britain and Ireland, or in any part of his majesty's dominions beyond the seas, without the leave and license of his majesty for that purpose first had and obtained as aforesaid, by adding to the number of the guns of such vessel, or by mounting those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which at the time of its arrival in any part of the United Kingdom, or any of his majesty's dominions, was a ship of war, cruiser, or armed vessel, in the service of any foreign prince, state, or potentate, or of any person or persons exercising, or assuming to exercise any power of government in or over any colony, province, or part of any province or people belonging to the subjects of any such state, or potentate, or to the inhabitants of any colony, province, or part of any province or country, under the controul of any person or persons so exercising, or assuming to exercise any powers of government ; every such person so offending shall be deemed guilty of a misdemeanor ; and shall, upon being convicted thereof, upon any information or indictment, be punished by death, or imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

Persons entering into military service in Asia, saved from this act.

12. Provided always, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to any subject to any penalty any person who shall enter into military service of any prince, state, or potentate in Asia, with the leave or license, signified in the usual manner, from the governor general in council, or vice-president in council, of Fort-William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such governor general or vice-president in council.

CHAPTER II.

OFFENCES AGAINST THE PUBLIC PEACE.

SECTION 1.

Riot and Unlawful Assembly.

Rich. 2, c. 8, Eng.—[*Recites 5 Rich. 2, c. 7, and the occurrence of serious riots in certain counties.*] Wherefore our lord the king in this present parliament hath forbidden the liege people, as well lords as other, of whatsoever estate they be, that none shall make such assemblies, riot, or against the peace, in no wise; and if any such assembly be made, as soon as the sheriffs and other the king's ministers(a) thereof have knowledge, they, with the strength of the county or shire, where such case shall happen, shall set disturbance against such malice with all their power, and shall take offenders, and them put in prison, till due execution of the law be made; and that all lords and other liege people of the realm shall be attending and aiding, with all their strength and power, to the sheriffs and ministers aforesaid.

Sheriffs and other the king's ministers taking the *posse*, shall suppress riots, and arrest rioters.

Hen. 4, c. 7, s. 1, Eng.—That if any riot, assembly, or disturbance against the law, be made in parties of the realm, the justices of peace, three, or two of them at the least, and the sheriff or under-sheriff of the county where such riot, assembly, or disturbance shall be made hereafter, shall come with the power of the county (if need be), to arrest them, and shall arrest them; and the same justices and sheriff, or under-sheriff, shall have power to record that which they shall find so done in their view against the law(b); (3) and that by the record of

Two justices taking the *posse*, may arrest rioters, and make a record of conviction against them on the view.

Under these words, all justices of the peace are clearly to be understood. 1 *Hawk. c. 65, s. 18.*

The practice of recording riots has now become nearly, if not altogether obsolete, notwithstanding the penalties annexed to the neglect of duty on the part of the justices, by the 4th section of the statute, and by 2 *Hen. 5, c. 8, Eng.* Those penalties are never recoverable against any but the justices of the county in which the riot was; 1 *Hawk. c. 65, s. 45*; and then only in cases where the riot was notorious, and savoured of insurrection or rebellion. *Id. s. 51.*

3 H. 4, c. 7. the same justices and sheriff or under-sheriff, such trespassers and offenders shall be convicted in the same manner and form as is contained in the statute of forcible entries; (a) (4) and if it happen that such trespassers and offenders be departed before the coming of the said justices and sheriff or under-sheriff, the same justices, three, or two of them, shall diligently inquire within a month after such riot, assembly, or rout of people made, and thereof shall hear and determine, according to law of the land.

2. [If the truth cannot be thus found, the whole matter shall be certified to the king and council; and the certificate shall have the force of a presentment by twelve men.]

3. [The certificate, if traversed, shall be sent for trial to the King's Bench; from which court, process shall issue to bring the rioters. In default of appearance, and after proclamation by the sheriff, they shall stand convicted.]

4. [The highest justices, the sheriff, under-sheriff, and justices of assize (if in the county), shall execute this statute under the pain of £100.]

2 Hen. 5, c. 8, s. 1, Eng.—[Recites 13 Hen. 4, c. 7, as the statute had not been duly executed; and enacts that, the prayer of the party grieved, the king's commission shall issue to inquire by a jury, as well of the original matter, as of the default of the justices, &c.; and that the chancellor, when he has knowledge of a riot, shall send the king's writ to the justices to put the 13 Hen. 4 into execution, under the pain therein contained.]

the posse comitatus shall attend justices to suppress riots.

2, (pars.) (5) And that the king's liege people, being summoned to travel in the county where such riots, assemblies, or riots be, shall be assistant to the justices commissioners, or under-sheriff of the same county, when they shall be reasonably warned, to ride with the said justices, commissioners, and under-sheriff, in aid to resist such riots, routs, and assemblies upon pain of imprisonment, and to make fine and ransom the king (b); . . . (7) and that like ordinances and orders shall hold place and take effect in cities, boroughs, and places and towns enfranchised, which have justices of the

(a) 2 Rich. 2, c. 7, post, 185.

(b) It hath been holden, that all persons whatsoever, even noblemen, and all others of what condition or degree they may be, except women, clergymen, persons decrepit or infants under the age of fifteen years, are bound, under pain of fine and imprisonment, upon reasonable warning, to attend the justices and sheriffs, and not only to arrest the rioters, but to conduct them to prison.—1 Hawk. c. 65, s. 20. It is also called the posse comitatus, or power of the county.

within the cities, boroughs, and other places aforesaid ; (8) and ^{2 Hen. 5, c. 8.} that this statute shall begin to hold place, presently after the proclamation thereof made.

^{26 Geo. 3, c. 19.}—Whereas of late many unlawful, riotous, tumultuous assemblies have been in divers parts of this kingdom ; and whereas it is the duty of justices of the peace, of the sheriff, and under-sheriff of the county, where any unlawful riot or tumultuous assembly shall be, taking with them, need be, the power of the county, to arrest the offenders so as bring them to justice : be it therefore enacted &c., that on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, every justice of the peace, sheriff, under-sheriff, mayor, bailiff, and other head officer, within the limits of their respective jurisdictions, taking with them the necessary assistance, ^{Magistrates, taking assistance, required to resort to riotous assemblies, and endeavour to disperse, and seize offenders ; and indemnified for killing, maiming, or hurting.} they are hereby authorized and empowered to command his majesty's subjects of age and ability, to be assisting to go therein,) shall resort to the place where such unlawful, riotous, and tumultuous assembly shall be, and there use their best endeavours to disperse the same, and to apprehend and seize the offenders, in order to their being proceeded against according to law ; and that if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt, in the dispersing, seizing, or apprehending, or the endeavouring to disperse, seize, and apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, or other peace officer, all and singular persons being aiding or assisting to them or any of them, shall be freed, discharged, and indemnified, as well as the king's majesty, his heirs and successors, as against and every other person and persons, of, for, or concerning the killing, maiming, or hurting any such person or persons so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt as aforesaid ; and that ^{Prosecution to be in twelve months.} prosecution whatsoever shall be had or carried on, against any justice or justices of the peace, sheriff, under sheriff, mayor, bailiff, head officer, or other peace officer, or person so aiding or assisting as aforesaid, on account of any such killing, maiming, or hurting, unless the same shall be commenced within twelve months next following.(a)

^{26 Geo. 3, c. 24, s. 74.}—That the several laws in this kingdom for raising the posse comitatus, shall be extended, as well to justices of the peace as sheriffs, in all cases of dangerous riots and rages, violation of the public peace by multitudes of people, whether by night or day.

^{Justices may raise the posse to suppress riots.}

(a) See also the 23 & 24 Geo. 3, c. 20, s. 7, ante, 36, as to riotously demolishing or setting fire to any building.

27 G. 3, c. 15.

Twelve or more rioters remaining together one hour after proclamation; felony, death.

27 Geo. 3, c. 15, (a) s. 1.—For the further prevention of tumultuous risings and assemblies, and for the more and effectual punishment of persons guilty of outrage, the illegal combination, and of administering and taking oaths; be it enacted &c., that if any persons to the number twelve or more, being unlawfully, riotously, and tumultuously assembled, to the disturbance of the public peace, at or after the twenty-fifth day of March, (1787,) and being summoned or commanded in the king's name, by any one or more justices of the peace, or by the sheriff of the county under sheriff, or by the mayor, sheriff, bailiff, or bailiffs, or head officer or justice of the peace of any city or town, or where any such rising or assembly shall be, by proclamation be made in the king's name, in the form hereinafter directed to disperse themselves and depart to their habitations, to the number of twelve or more, (notwithstanding such proclamation made as aforesaid,) unlawfully, riotously, and tumultuously remain or continue together as aforesaid, for the space of one hour after such proclamation made as aforesaid; the persons so continuing together as aforesaid, to the number of twelve or more, after such proclamation made as aforesaid, shall be judged felony without benefit of clergy; and the persons therein, being by due course of law thereof convicted, shall be adjudged felons, and shall suffer death as in cases of felony without benefit of clergy.

Form of proclamation to rioters.

2. That the order and form of the proclamation which shall be made by the authority of this act, shall be as hereafter following (that is to say); the justice or other person authorized by this act to make the said proclamation, shall, amongst the said persons, or as near to them as he can safely come, with a loud command, or cause to be commanded, silence to be kept, and then the said proclamation is making, and after that shall openly with a loud voice make, or cause to be made the following words, or like in effect, "Our sovereign lord the king commands and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the twenty-seventh year of king George the third to prevent tumultuous risings and assemblies;" and every justice of the peace as aforesaid, within the limits of his jurisdiction hereby authorized, empowered, and required, on notice of

(a) Entitled, "An act to prevent tumultuous risings and assemblies, and for the more effectual punishment of persons guilty of outrage, riot, and illegal combination, and of administering and taking unlawful oaths;" and commonly called "Riot Act."

if any such unlawful, riotous, and tumultuous rising or assembly as aforesaid, to resort to the place where the same shall be made, or cause to be made proclamation in manner aforesaid.

27 G. 3, c. 13.

That if any person or persons do or shall, by threats, menaces, or with force, wilfully or knowingly oppose, obstruct, let, or hinder any person or persons who shall begin to proclaim, or make proclamation, according to the proclamation hereby directed to be made, whereby such proclamation shall not be made; then every such threatening, opposing, obstructing, letting, hindering, or hindrance to any such person or persons so beginning or going to make such proclamation as aforesaid, shall be adjudged felony, without benefit of clergy; and the offenders therein, being by due course of law thereof convicted, shall be adjudged felons, and suffer death as in cases of felony, without benefit of clergy:

Hindering the making of such proclamation; felony, death.

That also every such person or persons, so being unlawfully, riotously, and tumultuously assembled, to the number of twelve or more as aforesaid, to whom proclamation should or ought to have been made, if the same had not been hindered as aforesaid, or otherwise, in case they or any of them, to the number of twelve or more, shall continue together in manner aforesaid, and not disperse themselves within one hour after such let or hindrance, having knowledge of such let or hindrance, shall be adjudged felons, and being, by due course of law, thereof convicted, shall suffer death as in cases of felony, without benefit of clergy.

Penalty on rioters to be the same as if proclamation made.

That if such persons so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, shall continue together in manner aforesaid, and not disperse themselves within one hour after proclamation made in manner as aforesaid, or after let or hindrance as aforesaid, then it shall and may be lawful for the justice of the peace, sheriff, or under-sheriff of the county where such rising or assembly shall be, or for every high and petty constable or other peace officer within such county, and also to and for every mayor, alderman, or other head officer, high or petty constable, or other peace officer of any city or town corporate where such rising or assembly shall be, and to and for every other person and persons as shall be required to be assisting to such justice of the peace, sheriff, or under-sheriff, mayor, or other head officer aforesaid, who are hereby authorized and empowered to command all his majesty's subjects of age and ability to be assisting to them therein, to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, or after let or hindrance as aforesaid, and forthwith to carry the same so apprehended before one or more of his majesty's justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law; and that if

Such rioters to be seized, and carried before a justice; and if any of them killed, the officers indemnified.

17 G. 3. c. 12.

the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt, in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them; then every justice of the peace, sheriff, under-sheriff, mayor, bailiff, and other officer, high or petty constable, or other peace officer, and all and singular persons aiding and assisting them, or any of them, shall be free, discharged, and indemnified, as well against his majesty, his heirs and successors, as against all and every other person and persons, of, for, or concerning the killing, maiming, or hurting of any such person or persons so unlawfully, riotously, and tumultuously assembled, as shall happen to be so killed, maimed, or hurt as aforesaid.

Pulling down
any religious
house, ob-
structing the
clergyman
&c.; felony,
death.

5. That if any persons unlawfully, riotously, and tumultuously assembled, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any church or chapel for the celebration of divine service according to the usage of the church of Ireland, or any building used for religious worship; or if any person or persons shall wilfully burn or set fire to, or shall maliciously fasten up any church or chapel or other building for religious worship as aforesaid; or by threats or force prevent or obstruct any clergyman from officiating or celebrating divine service therein; or shall maim or hurt any clergyman officiating or performing, or about to officiate or perform, divine service therein; then every such demolishing or pulling down, or beginning to demolish or pull down, or burning, or setting fire to, fastening up, preventing or obstructing, maiming or hurting, shall be adjudged felony, without benefit of clergy; and the offenders therein, being by due course of law thereof convicted, shall be adjudged felons, and shall suffer death as in cases of felony, without benefit of clergy.

Providing
&c. any in-
strument
for inflicting
bodily pu-
nishment, in
order to com-
pel persons
to enter into
combinations,
or to prevent
the giving
evidence, or
collecting
rates or taxes,
or destroying
property;
felony,
death.

8. That if any person or persons shall dig, erect, or provide, or cause or procure to be dug, erected, or provided, any grave, gallows, or gibbet, or any instrument for inflicting bodily pain or punishment, in order to induce or compel any person or persons to enter into, support, maintain, or assist in any unlawful combination or agreement whatsoever, or in order to deter or prevent any person from giving evidence in any suit or prosecution, civil or criminal, or to prevent the collection of any lawful rates or taxes, or shall make use of any manner of force, or inflict, or threaten to inflict any manner of bodily pain or punishment whatsoever, or destroy, or threaten to destroy the property of any person, in order to induce or compel any person to enter into, support, or maintain, or assist in any unlawful combination or conspiracy whatsoever, or to prevent the collection of any such rates or taxes, or to deter or prevent any person from giving evidence in any suit or prosecution, civil or criminal, or on account of any person's having declined or refused to enter into

any unlawful combination or agreement, or on account of any person's having given evidence in any action or prosecution, civil or criminal; every such person and all persons aiding, abetting, and assisting therein, being thereof by due course of law convicted, shall be adjudged guilty of felony without benefit of clergy; and shall suffer death, as in cases of felony, without benefit of clergy; and the body of every person that shall so suffer shall be delivered by the sheriff to the surgeon of the infirmary of the county, to be by him publicly dissected.

9. That if any person shall print, write, post, publish, or knowingly circulate or deliver, or shall cause or procure to be printed, written, posted, published, circulated, or delivered, any notice, letter, or message, exciting, or tending to excite any riot, tumultuous meeting, or unlawful combination or confederacy; every such person, being by due course of law thereof convicted, shall be adjudged a felon, and suffer death, as in cases of felony, without benefit of clergy.

10. That every person not lawfully thereunto authorized, who shall forcibly seize any arms(a) or ammunition belonging to any person or persons; or shall forcibly, or by menace or intimidation, exact or levy from any person any contribution in money or goods; or shall, by insinuation, menaces, threats, or violence, cause any person unwillingly to deliver any arms or ammunition, or to send such arms, ammunition, money, or goods to any person or persons, or place or places; and every person who shall knowingly and voluntarily supply horses, arms, or ammunition to any

Publishing &c. notices tending to excite unlawful meetings; felony death.

Unlawfully seizing arms, or exacting money or goods, or supplying horses, arms, or ammunition to rioters; felony, death.

(a) *Rex v. Maguire, Longford Lent Ass. 1832.*—The prisoner was indicted for that he, with others unknown, had feloniously and forcibly seized a gun, the property of *Richard Campbell*; and also for that they feloniously, and by insinuation, menaces, threats, and violence, had caused *Campbell* unwillingly to deliver the gun to them. The prisoner was convicted; but the learned Judge (JOHNSON J.) having some doubts, whether the 27 Geo. 3, as to this offence, was not affected by 1 & 2 Will. 4 c. 44—that which was a felony by the prior act, being made a misdemeanor by the latter one—respite sentence, and reserved the question for the consideration of the twelve judges. The offence for which the prisoner was indicted is, in substance, the same as that set out in the Whiteboy Act, 15 & 16 Geo. 3, c. 21, s. 7. In both, the offence is declared to be a felony; and the essential distinction is, that, under the 15 & 16 Geo. 3, it must have been committed after sunset, and before sunrise, or before 6 A. M. though the sun should then have been risen. That section of the Whiteboy Act has been repealed by the act 1 & 2 Will. 4, c. 44, and its provisions re-enacted, with this difference, that the offence, which was previously a felony, was thereby made a misdemeanour, and might also be committed at any time, whether by day or night. The Judges met in the ensuing term, and, upon consideration, were unanimously of opinion, that the statute 27 Geo. 3, c. 15, so far as regarded this case, was virtually repealed by the 1 & 2 Will. 4, c. 44, s. 1.

The 27 G. 3, c. 15, s. 10, as to seizing arms, has been repealed by the 1 & 2 W. 4, c. 44.

27 G. 3, c. 13.

person or persons, for the purpose of assisting any person or persons in the execution of any of the offences in this act mentioned, and be by due course of law thereof convicted, shall be adjudged a felon, and suffer death, as in cases of felony, without benefit of clergy.

Entering into unlawful combinations to defraud the clergy of their dues &c.

11. That every person who shall voluntarily enter into any unlawful combination or confederacy, to defraud any clergyman of the church of Ireland, or lay impropriator, of any tithes or dues to which he is legally entitled, or of any part thereof, or to obstruct him in the collection thereof; or shall, by force, threats, or other unlawful means, prevent any such clergyman or lay-impropriator, or any person or persons employed by him, from viewing, valuing, setting, or selling any tithes to which he is entitled; or, having heretofore entered into such combination or confederacy, shall do any act to defraud any such clergyman of the church of Ireland, or lay-impropriator, of any tithes or dues to which he is legally entitled, or of any part thereof, or to obstruct him in the collection thereof; or shall, by force, threats, or other unlawful means, prevent any such clergyman or lay-impropriator, or any person or persons employed by him, from viewing, valuing, setting, or selling any tithes to which he is entitled; every such person, being by due course of law thereof convicted, shall be adjudged guilty of a misdemeanor; and the court before whom such person shall be tried, shall order such offender to be punished by fine and imprisonment, or to suffer such corporal punishment as the court shall direct.

or preventing the valuing and setting tithes. Fine and imprisonment, or corporal punishment.

Prosecution in a year.

12. Provided always, and be it enacted, that no person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within one year after the offence committed; and that this act shall continue to be of force for three years, and to the end of the then next session of parliament, and no longer. (a)

A justice may convict summarily, in cases of riot on shore, respecting the fisheries.

28 Geo. 3, c. 27, (b) s. 2.—That in case of any riot or disturbance on shore, where no sufficient remedy is provided for immediately putting a stop thereto, or for enabling any justice or justices of the peace to make compensation to the person or persons who shall be aggrieved or injured thereby, by any law in being; that it shall and may be lawful for any justice or justices of the peace, on complaint made on oath, to cause the person or persons charged therewith, to be brought before him or them, and to hear and determine in a summary way, on the oath or oaths of one or more credible witness or witnesses, such complaint; and on due proof thereof made, to fine any such person or persons respectively, in any sum not exceeding forty shillings, to be levied by distress and sale of his, her, or their goods, and to pay over the same to the party injured; and if no

(a) This act was made perpetual by the 40 Geo. 3, c. 96.

(b) Entitled, "An act to explain and amend the laws relative to the fisheries on the coasts of this kingdom."

distress can be found for that purpose, to commit such person or persons to prison, for any time not exceeding one month, provided such fine shall not be paid within that time. 28 G. 3, c. 27.

2 & 3 Will. 4, c. 118, (a) s. 1. Whereas great numbers of persons belonging to different religious denominations, and distinguished respectively by various emblems, expressive of party feelings and differences, are in the practice of meeting and marching in procession in Ireland, upon certain festivals and anniversaries and other occasions; and such processions are calculated to create and perpetuate animosities, and have been found to occasion frequent and sanguinary conflicts between different classes of his Majesty's subjects; for prevention whereof, and in order to guard against the recurrence of the tumults, riots, and disorders arising out of such processions, be it enacted &c., that from and after the commencement of this act, any body of persons who shall meet and parade together, or join in procession, for the purpose of celebrating or commemorating any festival, anniversary, or political event, relating to, or connected with any religious or other distinctions or differences between any classes of his majesty's subjects, or of demonstrating any such religious or other distinction or difference, and who shall bear, wear, or have amongst them any fire-arms or other offensive weapons, or any banner, emblem, flag, or symbol, the display whereof may be calculated, or tend to provoke animosity between his majesty's subjects of different religious persuasions, or who shall be accompanied by any music of a like nature or tendency; shall be and be deemed an unlawful assembly; and every person present thereat, shall be and be deemed to be guilty of a misdemeanor, and shall, upon conviction thereof, be liable to be punished accordingly. (b)

What processions shall be unlawful.

(a) Entitled, "*An act to restrain for five years, in certain cases, party processions in Ireland.*" It continued in force for five years, and until the end of the then next session of parliament (s. 4.); and has been since continued by the 1 & 2 Vict. c. 34, for a similar period from the 4th of July, 1838.

(b) *R. v. —, Armagh Summer Assizes, 1833.*—At the last assizes for the county of Armagh, fourteen persons were indicted upon the 2 & 3 Will. 4, c. 118, s. 1, for that they, with others, to the number of one hundred, on the 12th of July, in the fourth of the king, at Lurgan, did knowingly, wilfully, and unlawfully meet and parade together, and join in procession in a body, for the purpose of celebrating and commemorating a certain anniversary and political event relating to, and connected with certain religious distinctions and differences between certain classes of his majesty's subjects, that is to say, the anniversary of the battle of Aughrim, and the political event commonly called the battle of Aughrim; and that they did then and there bear, wear, and have among them certain banners, emblems, flags, and symbols, the display whereof was then and there calculated, and did then and there tend to provoke animosity between his majesty's subjects of different religious persuasions, that is to say, his

Persons offending against the first section of the processions' act, may be indicted as for a distinct misdemeanor.

2 & 3 W. 4, c.
118.

Justices to
disperse such
assemblies or
processions.

2. That any justice or justices of the peace shall and may proceed, with such assistance as shall be necessary, to the place where any procession or meeting of persons hereby declared to be unlawful shall be held or take place; and such justice, or one of such justices, or some other person by their or his order, shall then and there read or repeat aloud, to the persons so assembled, a command or notice to disperse, in the words of the effect following; that is to say:—"Our Sovereign Lord the King chargeth and commandeth all persons being here assembled, immediately to disperse themselves, and peaceably to depart, upon the pains contained in the act made in the year of the reign of King William the Fourth, to restrain, in certain cases, party processions in Ireland."

Persons refusing to disperse, to be apprehended and punished.

3. That the persons so met and assembled together, shall forthwith disperse and depart; and in case any one or more of the persons so met or assembled together as aforesaid, shall not disperse and depart within the space of one quarter of an hour from the time of such notice or command being given, it shall be

majesty's subjects of the Protestant religious persuasion, and his majesty's subjects of the Roman Catholic persuasion; against the peace and statute. There was a second count, omitting the word "religious." Also, a third count, the same as the first, only stating the anniversary to be the battle of the Boyne. And a fourth, the same as the third, only omitting the word "religious."

When the evidence for the prosecution was closed, the counsel for the prisoners called upon me to direct an acquittal, insisting that the provisions of the several sections of the statute on which the indictment was framed, formed but one offence, and were to be taken together; and that the legislature, having created a new offence, and appointed and prescribed a particular remedy for such new offence, no other method of proceeding can be pursued, consistently with the ordinary rules of legal construction, and the necessary interpretation of the words of the statute. I left the case to the jury, stating it to be my opinion that the first section of the act was alone sufficient to support the indictment. After long deliberation, they acquitted eleven of the traversers, and found three of them guilty. I considered it, however, to be my duty to respite the judgment, in order to have your lordships' opinion upon the abstract question, whether, upon the first section of the statute, the indictment can be maintained.

ARTHUR MOORE.

THE JUDGES met and considered the case; and gave it as their opinion, that the indictment lay.

The walking in procession, with suitable banners &c., on the 18th of December, to celebrate the shutting of the Gates of Derry, *R. v. Jameson, Derry Lent Ass. 1835*; or at the funeral of an orangeman, which took place on the 13th of February, 1834, *R. v. Davison, L. Derry Spr. Ass. 1835*; or to celebrate the return to parliament of Daniel O'Connell, as member for the city of Dublin, *R. v. Downes, L. Derry Summer Ass. 1835*; all have been held to be offences within the act.

lawful for the same justice or justices who shall have read such command or notice, or any other justice or justices of the peace, to cause the person or persons so refusing or neglecting to appear or depart, to be apprehended, by a warrant for that purpose to be signed by him or them; and such offender or offenders shall thereupon be proceeded against in a summary way for such offence, before any two justices of the peace, before whom he or they may be brought; and such justices are hereby authorized to hear and determine the said complaint; and every person, being convicted thereof on the oath of one or more credible witness or witnesses, shall be committed to any one of his majesty's common gaols or prisons in Ireland, for the term of one calendar month, and for a second or any subsequent offence against the provisions of this act, for the term of three calendar months.(a)

2 & 3 W. 4, c. 118.

SECTION 3.

Unlawful Oaths and Confederacy.

27 Geo. 3, c. 15, s. 6.—That any person or persons not duly qualified by law to administer(b) oaths, who shall administer, or cause to be administered, or tender, or cause to be tendered to, or by threats, promises, persuasion, or other undue means, cause, induce, or procure to be taken by any person or persons, any un-

Administering unlawful oaths, or taking such, save by necessity; felony.

(a) *Rex v. Forbes and others; K. B. Ire., H. T. 1823.*—This was an information filed by the attorney-general, *ex-officio*, against the traversers, for a conspiracy to create a riot, and to insult and assault his Excellency the Lord Lieutenant, in the Theatre Royal; and also for a riot. BUSHE, C. J., in summing up, said:—"The rights of an audience at a Theatre are perfectly well defined. They may cry down a play, or other performance, which they dislike; or they may hiss or hoot the actors, who depend on their approbation or their caprice. Even that privilege however, is confined within its limits. They must not break the peace, or act in such a manner as has a tendency to excite terror or disturbance. Their censure or approbation, although it may be noisy, must not be riotous. That censure or approbation must be the expression of the feelings of the moment; for, if it be premeditated by a number of persons, confederated beforehand to cry down even a performance or an actor, it becomes criminal. Such are the limits of the privileges of an audience, even as to actors and authors."

Rights of the audience in a theatre, as to expressing their censure or approbation.

(b) *Rex v. Hayes, Clare Sp. Com. June, 1831.*—The prisoner was indicted for that he, not being duly qualified, had feloniously administered to Patrick Hogan a certain oath, of the import following:—"That he (Hogan) would deliver to one T. Lynch a threatening letter, then given him, before breakfast time, the next morning." Hogan deposed that a party of men came to his house by night; one of whom, the prisoner, entered, and handed to him

The party who complies with the terms of an illegal oath is a competent witness on an indictment for administering it.

27 G. 3, c. 15.

Taking unlawful oath, not being compelled, transportation for seven years.

Sufficient in indictment to set forth the import of such oaths, without mentioning the person tendering or taking them.

lawful oath(s) or solemn engagement, upon a book or other wise, and being by due course of law thereof convicted, shall be adjudged guilty of felony, and may be transported for life; and every person who shall take any such oath or solemn engagement as aforesaid, not being thereto compelled by inevitable necessity, and being by due course of law thereof convicted, shall be adjudged guilty of felony, and suffer as a felon, and may be transported for seven years.

7. That where any indictment shall be found against any person or persons for administering, or causing to be administered, or tendering, or causing to be tendered, or inducing, or procuring to be taken by any person or persons, any unlawful oath or solemn engagement, or against any person or persons who shall take any such oath or engagement as aforesaid; it shall not be necessary, in any such indictment for any of the said offences, to set forth the form of words made use of in such oath or engagement; but that it shall be sufficient to set forth in any such indictment the general import of such oath or engagement; and where any indictment shall be found against any person or persons for administering, or causing to be administered, or tendering, or causing to be tendered, or inducing, or procuring to be taken by any person or persons, any such unlawful oath or engagement, it shall not be necessary to set forth the name or names of the person or persons to whom such oath or engagement

And such indictment may be sustained, though the party have neither repeated the oath, nor kissed the book.

a sealed letter, which he swore him to deliver, on the following morning, to *Lynch*. The oath was pronounced by the prisoner; but was not repeated after him by *Hogan*, neither did *Hogan* kiss the book. The letter was delivered by him on the following morning. *Gibson*, for the prisoner, objected that the evidence of *Hogan*, being an accomplice, was not sufficient to sustain the indictment; and that, at all events, his omission to repeat the oath, or to kiss the book, was fatal. *JEBB, J.*, overruled all the objections, and said that the indictment was for administering an illegal oath, and not for sending a threatening letter; that though *Hogan* might be considered as *particeps criminis* in the latter offence, his testimony was sufficient on the other charge. Verdict, —guilty.

Construction. (b) *Rex v. Adams, Maryborough Sp. Com. June, 1832.*—The indictment was framed under the 27 Geo. 3, c. 15, s. 6, for “causing, inducing, or procuring to be taken an unlawful oath.” *Brady*, counsel for the prisoner, contended that, upon a comparison of the words of this statute with those of the 21st sec. of the Whiteboy Act, (15 & 16 Geo. 3, c. 21,) whereby it is made criminal “unlawfully to impose any oath,” the construction must be, that the former statute prohibits the administering of an oath which would bind the person to do an unlawful thing, while the whiteboy Act prohibits the administering of any oath by persons not legally authorized. That the object of the oath in this case, not being unlawful, viz., the surrendering of a farm by the prosecutor, the indictment could not be sustained. The learned Judges (*BUSHE, C. J.*, and *SMITH, B.*) reserved the question for the con-

was tendered, or by whom such oath or engagement was taken. (a) 27 G. 3, c. 15.

2. Provided always, and be it enacted, that no person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within one year after the offence committed.

50 Geo. 3, c. 102, s. 1.—Whereas divers wicked and evil-disposed persons have from time to time attempted to seduce several of his majesty's subjects in Ireland from their duty and allegiance to his majesty, and to associate them under the pretended obligations of oaths unlawfully administered: be it enacted &c., that any person or persons who, at any time after the passing of this act, shall administer, or cause to be administered, tender or cause to be tendered, or be present aiding and assisting at the administering or tendering, or who shall by threats, promises, persuasions, or other undue means, cause, procure, or induce to be taken by any person or persons in Ireland, upon a book or otherwise, any oath or engagement, importing to bind the person or persons taking the same to be of any association, brotherhood, committee, society, or confederacy whatsoever, in reality formed or to be formed for seditious purposes, or to disturb the public peace, or to injure the persons or property of any person or persons whatsoever, or to compel any person or persons whatsoever to do, or omit or refuse to do any act or acts whatsoever, under whatever name, description, or pretence, such association, brotherhood, committee, society, or confederacy shall assume or pretend to be formed or constituted, or any oath or engagement importing to bind the person taking the same to obey the orders or rules or commands of any committee or other body of men not lawfully constituted, or of any captain, leader, or commander (not appointed by, or under the authority of his majesty, his heirs and successors), or to assemble at the desire and command of any such captain, leader, commander, or committee, or of any person or persons not having lawful authority, or not to inform or give evidence against any brother, associate, confederate, or other person, or not to reveal or discover his or her having taken any illegal oath, or not to reveal or discover any illegal act done or to be done, or not to discover any illegal oath or engagement which may be administered or tendered to him or her, or the import thereof, whether such oath shall be afterwards so administered or tendered or not, or whether he or she shall take such oath, or enter into such engagement or not, being by due course of law convicted thereof,

Prosecution to be in one year.

Administering or taking oaths for seditious, and other purposes; felony.

consideration of the twelve Judges; subject to which, the prisoner was found guilty, and sentenced. In the following term, the Judges met and considered the case, when ten of them (JOY, C. B., and TORRENS, J. being absent) were of opinion that the objection was unfounded, and that the evidence supported the indictment.

(a) See the 15 & 16 Geo. 3, c. 21, s. 21. *Post*, Section 3, "Whiteboy Offences," p. 162.

80 G. 3, c. 102. shall be adjudged guilty of felony, and be transported for life; and every person who shall take, in Ireland, any such oath or engagement, importing so to bind him or her as aforesaid, and being by due course of law thereof convicted, shall be adjudged guilty of felony, and be transported for seven years.

Necessity shall not justify offenders, unless they give information to a justice, in time and manner as herein.

2. Provided always, that any person or persons who may have been compelled by inevitable necessity to commit any of the offences aforesaid, upon proof of such inevitable necessity, shall be excused and justified: provided that no such inevitable necessity shall justify or excuse any such person or persons, unless he, she, or they shall within ten days, if not prevented by actual force or sickness, and then within seven days after such actual force or sickness shall cease to disable him, her, or them from giving information of the same, disclose to one of his majesty's justices of the peace in the county in which he, she, or they shall then be, by information on oath, the whole of what he, she, or they knew touching the compelling him, her, or them to commit any such offence, and of the person or persons by whom, he, she, or they were compelled to commit such offence, and who were present at the time such offence was committed, and of the place where the same was committed: provided however, that no person shall be so excluded from the defence of inevitable necessity, who shall be tried for the said offence within the said period of ten days from the commission of such offence, or of seven days from the time when such force or sickness shall cease as aforesaid.

Aiders and abettors deemed principals.

3. That all persons present, aiding and assisting at the administering or tendering of any such oath or engagement, and all persons causing any such oath or engagement to be administered or tendered, though not present, shall be deemed principal offenders, and tried as such, though the person or persons who actually administered or tendered such oath or engagement shall not have been tried or convicted.

Purport of oath sufficient in indictment.

4. That it shall not be necessary, in any indictment to be found against any person for administering, tendering, or taking such oath or engagement, to set out the words of such oath or engagement; and that it shall be sufficient to set forth therein the purport or object of such oath or engagement.

Magistrates may act in adjacent counties &c.

8. That it shall and may be lawful to and for all magistrates of the adjacent counties at large respectively, to execute this act within the several counties of cities or counties of towns in Ireland, except the county of the city of Dublin; and in like manner, that the several magistrates of such counties of cities and counties of towns shall have like powers to execute this act in the adjacent counties at large.

Powers of this act extended to all magistrates.

9. That all the powers and authorities given to, and all duties required from magistrates of counties at large, under and by this act, shall be and are hereby given to, and required from all magistrates of counties of towns, or counties of cities in Ireland.

4 Geo. 4, c. 87, s. 1.—Whereas an act was passed in &c. [50 Geo. 3, c. 102]; and it is expedient that so much of the

Provisions of the said act, as relates to such unlawful oaths, should be considered more effectual ; be it therefore enacted, &c., that after the expiration of fourteen days next after the passing of this act, any and every society, association, brotherhood, committee, lodge, club, or confederacy whatsoever, now established, or hereafter to be established in Ireland, of the nature hereinafter described, shall be and be deemed and taken to be, and is hereby declared to be an unlawful combination and confederacy ; that is to say, any and every society, association, brotherhood, committee, lodge, club, or confederacy, the members whereof shall, according to the rules thereof, or to any revision or agreement for that purpose, be required, or admitted, or permitted to take any oath or engagement which shall be an unlawful oath or engagement, within the intent and meaning of the said recited act of the fiftieth year of his late majesty's reign, to take any oath not required or authorized by law ; and any and every society, association, brotherhood, committee, lodge, club, or confederacy, the members whereof, or any of them, shall take, or in any manner bind themselves by any such oath or engagement, upon becoming, or in consequence of being members of such society, association, brotherhood, committee, lodge, club, or confederacy ; and any and every society, association, brotherhood, committee, lodge, club, or confederacy, the members whereof shall take, subscribe, or assent to any test declaration not required by law ; and any and every society, association, brotherhood, lodge, club, or confederacy, of which the names of the members or any of them, shall be kept secret from the society at large, or which shall have any committee or select body chosen or appointed in such manner that the members constituting the same may not be known by the society at large to be members of such committee or select body, or which shall have any president, treasurer, secretary, delegate, or other officer, chosen or appointed in such manner that the election or appointment of such persons to such offices may not be known to the society at large, or of which the names of all the members, and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers, shall not be entered in a book or books to be kept for that purpose, and to be open to the inspection of all the members of such society : and all such societies, associations, brotherhoods, committees, lodges, clubs and confederacies as aforesaid, are hereby declared to be unlawful combinations and confederacies : and every person who, at any time after the expiration of fourteen days next after the passing of this act, shall become a member of any such society, association, brotherhood, committee, lodge, club, or confederacy, as aforesaid, or who, being a member of any such society, association, brotherhood, committee, lodge, club, or confederacy, at the time of the passing of this act, shall afterwards act as a member thereof ; and every person who, after the expiration of fourteen days next after the passing of this act, shall, directly or indi-


4 G. 4, c. 67.

Societies deemed unlawful, the members of which are required to take oaths declared unlawful by 50 G. 3, c. 102.

Societies having members whose names are kept secret, or not known to the associations at large :

Names of members whereof shall not be entered.

All present members acting, and all future members, declared guilty of unlawful combination.

4 G. 4, c. 87.  rectly, maintain correspondence or intercourse with any society, association, brotherhood, committee, lodge, club, or confederacy, or with any division, branch, lodge, committee, or other select body, president, treasurer, secretary, delegate, or other officer, or member thereof, as such ; or who shall, by the distribution of money or otherwise, aid, abet, or support any society, association, brotherhood, committee, lodge, club, or confederacy, or any member or officer thereof, as such, shall be deemed guilty of an unlawful combination and confederacy.

Not to extend to declarations of societies, if approved by two justices, and registered.

2. Provided always nevertheless, and be it enacted, that nothing herein contained shall extend to any declaration taken, subscribed, or assented to by the members of any society, in case the form of such declaration shall have been approved and subscribed by two or more of his majesty's justices of the peace for the county, county of a city, county of a town, or place, where such society shall ordinarily assemble, and have been registered with the clerk of the peace, or his clerk, for such county, county of a city, county of a town, or place, for which there shall be paid a fee of one shilling, and be it further enacted, that but that such approbation of the justices, as aforesaid, shall remain valid and effectual no longer than until the next general session for such county, county of a city, county of a town, or place, unless the same shall, on application made by the society concerned, be confirmed by the major part of the justices sent at such general session ; and if the same shall not be so confirmed, and there so confirmed, the provisions of this act shall thenceforth extend to such declaration, and to all societies and persons subscribing the same, in so far as may relate to the same, which may be done by them, or any of them, subsequent to the holding of such general session.

Offenders may be proceeded against, before two justices.

Persons convicted before justices may be imprisoned or fined.

3. That every person who, at any time after the expiration of fourteen days next after the passing of this act, shall, in breach of any of the provisions thereof, be guilty of any such unlawful combination and confederacy as in this act is described, shall and may be proceeded against for such offence in a summary way, either before any two or more of the justices of the peace for the county, county of a city, or county of a town or place where such person shall happen to be indicted, to be preferred in the county, county of a city, county of a town or place in Ireland, wherein such offence shall be committed ; and every person being convicted of such offence, on the oath of one or more credible witnesses, by such justices as aforesaid, shall be by the justices committed to the common gaol or house of correction in the county, county of a city, or county of a town or place where such offence shall be committed, to remain without bail or mainprize for the term of three calendar months ; or shall be by such justices adjudged to forfeit and pay the sum of twenty pounds, British currency, as such justices shall seem meet ; and in case such sum of money shall not be forthwith paid into the hands of such justices, or

and under their hands and seals, cause the same to be by distress and sale of the offender's goods and chattels, with all costs and charges attending such distress and sale, for want of sufficient distress, shall commit such offender to the common gaol or house of correction of such county of a city, or county of a town or place, as directed, for any time not exceeding three calendar months; any person convicted of any such offence, upon indictment or by course of law, shall and may be transported for the term of years, in the manner provided by law for transportation of convicts, or shall and may be sentenced to imprisonment and labour, and shall be imprisoned, for any time not exceeding two years, as the court before whom such offender is tried shall think fit; and every such offender, who shall be ordered to be transported or imprisoned, shall be subject and bound to all laws concerning offenders ordered to be transported or imprisoned.

Provided always, and be it enacted, that it shall be lawful for the justices of the peace, by or before whom any person shall be convicted in pursuance of this act, be convicted of any unlawful combination or confederacy, and such justices are hereby authorized and empowered (if they shall see cause so to do) to mitigate and to mitigate the punishment hereinbefore directed to be inflicted upon any offender against this act so convicted as aforesaid, so that the punishment be not thereby reduced to less than one-half of the punishment hereby directed to be inflicted as aforesaid, whether such punishment shall be imprisonment or fine. Provided also, and be it enacted, that any person who shall be prosecuted before any justice of the peace in a summary way for any offence against this act, and shall be convicted or acquitted by such justices, shall not afterwards be prosecuted, or be liable to be prosecuted, by indictment or otherwise, for the same offence; and so, in like manner, any person who shall be convicted or acquitted upon any indictment, for any offence against this act, shall not afterwards be prosecuted, or be liable to be prosecuted, before any justices of the peace in a summary way for the same offence.

Provided also, and be it enacted, that nothing in this act contained shall extend to prevent any prosecution by indictment or otherwise, for any thing which shall be an offence within the true meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been prosecuted for such offence under this act, and shall be convicted or acquitted of such offence; and that no person shall be prosecuted under this act, for having been, before the passing of this act, a member of any society, association, brotherhood, trade, lodge, club, or confederacy, hereby declared to be an unlawful combination and confederacy, if such person shall not in any manner have acted as a member of such society, associa-

4 G. 4, c. 87.

If convicted on indictment, offenders may be transported for seven years, or imprisoned for two years, with hard labour.

Justices may mitigate punishment.

Persons prosecuted, either before a justice, or by indictment, not liable to other prosecution.

Offenders may be indicted as heretofore, if not prosecuted under this act.

Persons not punishable as members of any society, unless they continue to act as such.

4 G. 4, c. 97.

Penalty on
persons per-
mitting un-
lawful meet-
ings in their
houses.

Application
of penalties.

Form of con-
viction.

tion, brotherhood, committee, lodge, club, or meeting, fourteen days from the passing of this act.

7. That if any person shall knowingly permit of any society hereby declared to be an unlawful or confederacy, or of any division, branch, or part of such society, to be held in his or her house or any person shall, for the first offence, forfeit the sum of to be recovered in like manner as any other person act; and shall, for any such offence committed after his or her conviction for such first offence, be deemed an unlawful combination or confederacy in breach.

8. That all pecuniary penalties imposed by this act be applied and disposed of in manner following; one moiety thereof to the informer, and the other moiety to his majesty, his heirs, and successors.

9. That any conviction by any justices of the peace of a combination and confederacy in pursuance of this act may be in the form following; that is to say:—

‘ M } BE It remembered, that on this
‘ to wit. } in the
‘ } reign of A. B. of
‘ before us, A. B. and C. D., two of his majesty’s justices of
‘ the county [city or town] of in pursuance
‘ in the fourth year of the reign of King George the Fourth
‘ [title of this act;] for that the said A. B. after the passing
‘ act, to wit, on the day of at
‘ did, contrary to the said act, become a member of [or, as
‘ act as a member of, or maintain correspondence or in
‘ or by contribution of money or otherwise, abet or support
‘ [describing the society,] which society is an unlawful
‘ confederacy within the intent and meaning of the said
‘ we, the said A. B. and C. D. do adjudge that he, the said
‘ the sum of pounds [or be imprisoned
‘ ,] as a penalty for his offence,
‘ the said act. Given under our hands and seals, this
‘ in the year of our Lord
‘ year of the reign of his majesty.’

SECTION 3.

Whiteboy Offences.

15 & 16 Geo. 3, c. 21, (a) s. 1.—Whereas it hath happened of late years in different parts of this kingdom several persons calling themselves Whiteboys, at all times, both by night as in the day-time, have in a riotous and tumultuous manner assembled together, and have injured the persons, habitations, and property of his majesty’s loyal and faithful subjects, and have carried away their horses and arms, and have refused to surrender up, quit, and leave their habitations and places of abode, and have with threats and violence

(a). Entitled, “*An act to prevent and punish tumultuous persons within this kingdom, and for other purposes therein mentioned,*” and commonly called the WHITEBOY ACT.

and column declarations, contrary to law, and solid of his Majesty's subjects, by threats and promises, them in such their mischievous and iniquitous projects have also sent threatening and incendiary letters to them, to the great terror of his majesty's peaceable and have taken upon themselves to obstruct the exportation of corn, grain, meal, malt, and flour, and to destroy the same when intended for exportation, and have closed mills, granaries, and store-houses provided for the export of corn; which, if not effectually prevented, must be dangerous to the general peace of this kingdom, and to the government therein. [It recites the acts 5 & 6 Geo. 3, and its insufficiency to prevent disturbances of the peace, and enacts that no person shall be indicted or punished for that act, for offences committed after the first of June 1776.]

15 & 16 G. 3,
c. 21.

if any person(s) or persons, from and after the first of June, (1776,) being armed with any fire-arms, firelock, or any offensive weapon or weapons whatsoever, or in any manner, or their face or faces, body or bodies disguised in any manner whatsoever, or wearing any particular badge, or uniform, not usually worn by him, her, or them upon their lawful occasions, or assuming any particular designation or denomination not usually assumed by his majesty's subjects, on their lawful occasions, shall rise, assemble, or lay or by night, to the terror of his majesty's sub-

Rising, assembling, or appearing in arms, disguised &c., to the terror of &c.; misdemeanor.

Whelan and another, Maryborough Sp. Com. June, 1776. prisoners were indicted under the 15 & 16 Geo. 3, c. 21, for rising, assembling, and appearing in arms, to the terror of his Majesty's subjects. The material facts proved were, that the prisoners had been arrested together in the town of Maryborough, about seven P. M. A pistol, which appeared to have recently discharged, was found under the coat of one of the prisoners; and two powder horns were found in the pockets of both. It was also proved that a Whiteboy outrage had been committed by a large party of about a quarter of a mile of the town, between five and six o'clock on the same evening. A shot also had been fired, and the party violently beaten. Both the prisoners, who were side by side when arrested, attempted to avoid the person who secured them. The C. J., (with whom SMITH, B. was joined in the bench,) in charging the jury, said—that the word "rising" was not satisfied by the mere circumstance of two men being together with arms in a street or road. Neither the word "assembling" be held to apply to such a circumstance, nor the word "appearing" admitted of a different construction. And the expression "person or persons" (using the latter) showed the intention of the legislature to be, that a single person appearing in arms, to the terror of the people, was an offence within the statute. Provided the district within which the party appeared was in a Whiteboy disturbance. If the jury thought that the

The Whiteboy offence, of appearing in arms to the terror of the king's subjects, may, in a disturbed district, be committed by a single individual.

27 G. 3, c. 15.

Taking unlawful oath, not being compelled, transportation for seven years.

Sufficient in indictment to set forth the import of such oaths, without mentioning the person tendering or taking them.

lawful oath(s) or solemn engagement, upon a book or other wise, and being by due course of law thereof convicted, and adjudged guilty of felony, and may be transported for life; and every person who shall take any such oath or solemn engagement as aforesaid, not being thereto compelled by inevitable necessity, and being by due course of law thereof convicted, shall be adjudged guilty of felony, and suffer as a felon, and may be transported for seven years.

7. That where any indictment shall be found against any person or persons for administering, or causing to be administered, or tendering, or causing to be tendered, or inducing, or procuring to be taken by any person or persons, any unlawful oath or solemn engagement, or against any person or persons who shall take any such oath or engagement as aforesaid; it shall not be necessary, in any such indictment for any of the said offences, to set forth the form of words made use of in such oath or engagement; but that it shall be sufficient to set forth in any such indictment the general import of such oath or engagement; and where any indictment shall be found against any person or persons for administering, or causing to be administered, or tendering, or causing to be tendered, or inducing, or procuring to be taken by any person or persons, any such unlawful oath or engagement, it shall not be necessary to set forth the name or names of the person or persons to whom such oath or engagement

And such indictment may be sustained, though the party have neither repeated the oath, nor kissed the book.

a sealed letter, which he swore him to deliver, on the following morning, to *Lynch*. The oath was pronounced by the prisoner; but was not repeated after him by *Hogan*, neither did *Hogan* kiss the book. The letter was delivered by him on the following morning. *Gibson*, for the prisoner, objected that the evidence of *Hogan*, being an accomplice, was not sufficient to sustain the indictment; and that, at all events, his omission to repeat the oath, or to kiss the book, was fatal. *JEBB, J.*, overruled all the objections, and said that the indictment was for administering an illegal oath, and not for sending a threatening letter; that though *Hogan* might be considered as *particeps criminis* in the latter offence, his testimony was sufficient on the other charge. Verdict, —guilty.

Construction.

(b) *Rex v. Adams, Maryborough Sp. Com. June, 1832.*—The indictment was framed under the 27 Geo. 3, c. 15, s. 6, for “causing, inducing, or procuring to be taken an unlawful oath.” *Brady*, counsel for the prisoner, contended that, upon a comparison of the words of this statute with those of the 21st sec. of the Whiteboy Act, (15 & 16 Geo. 3, c. 21,) whereby it is made criminal “unlawfully to impose any oath,” the construction must be, that the former statute prohibits the administering of an oath which would bind the person to do an unlawful thing, while the whiteboy Act prohibits the administering of any oath by persons not legally authorised. That the object of the oath in this case, not being unlawful, viz., the surrendering of a farm by the prosecutor, the indictment could not be sustained. The learned Judges (*BUSHE, C. J.*, and *SMITH, B.*) reserved the question for the con-

as tendered, or by whom such oath or engagement was 27 G. 3; c. 15.

Provided always, and be it enacted, that no person or per-
all be prosecuted by virtue of this act, for any offence or
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Prosecution
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3, c. 102, s. 1.—Whereas divers wicked and evil-
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ender or cause to be tendered, or be present aiding and
g at the administering or tendering, or who shall by
, promises, persuasions, or other undue means, cause,
, or induce to be taken by any person or persons in Ire-
pon a book or otherwise, any oath or engagement, import-
bind the person or persons taking the same to be of any
tion, brotherhood, committee, society, or confederacy
ever, in reality formed or to be formed for seditious pur-
or to disturb the public peace, or to injure the persons or
ty of any person or persons whatsoever, or to compel any
or persons whatsoever to do, or omit or refuse to do any
acts whatsoever, under whatever name, description, or
ce, such assooiation, brotherhood, committee, society, or
eracy shall assume or pretend to be formed or constituted,
oath or engagement importing to bind the person taking
ne to obey the orders or rules or commands of any com-
or other body of men not lawfully constituted, or of any
n, leader, or commander (not appointed by, or under the
ity of his majesty, his heirs and successors), or to assemble
desire and command of any such captain, leader, com-
r, or committee, or of any person or persons not having
authority, or not to inform or give evidence against any
r, associate, confederate, or other person, or not to reveal or
er his or her having taken any illegal oath, or not to reveal
over any illegal act done or to be done, or not to discover
legal oath or engagement which may be administered or
ed to him or her, or the import thereof, whether such oath
be afterwards so administered or tendered or not, or
er he or she shall take such oath, or enter into such en-
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so G. 3, c. 102. shall be adjudged guilty of felony, and be transported for life, and every person who shall take, in Ireland, any such oath or engagement, importing so to bind him or her as aforesaid, and being by due course of law thereof convicted, shall be adjudged guilty of felony, and be transported for seven years.

Necessity shall not justify offenders, unless they give information to a justice, in time and manner as herein.

2. Provided always, that any person or persons who may have been compelled by inevitable necessity to commit any of the offences aforesaid, upon proof of such inevitable necessity, shall be excused and justified: provided that no such inevitable necessity shall justify or excuse any such person or persons, unless he, she, or they shall within ten days, if not prevented by actual force or sickness, and then within seven days after such actual force or sickness shall cease to disable him, her, or them from giving information of the same, disclose to one of his majesty's justices of the peace in the county in which he, she, or they shall then be, by information on oath, the whole of what he, she, or they know touching the compelling him, her, or them to commit any such offence, and of the person or persons by whom, he, she, or they were compelled to commit such offence, and who were present at the time such offence was committed, and of the place where the same was committed: provided however, that no person shall be so excluded from the defence of inevitable necessity, who shall be tried for the said offence within the said period of ten days from the commission of such offence, or of seven days from the time when such force or sickness shall cease as aforesaid.

Aiders and abettors deemed principals.

3. That all persons present, aiding and assisting at the administering or tendering of any such oath or engagement, and all persons causing any such oath or engagement to be administered or tendered, though not present, shall be deemed principal offenders, and tried as such, though the person or persons who actually administered or tendered such oath or engagement shall not have been tried or convicted.

Purport of oath sufficient in indictment.

4. That it shall not be necessary, in any indictment to be found against any person for administering, tendering, or taking such oath or engagement, to set out the words of such oath or engagement; and that it shall be sufficient to set forth therein the purport or object of such oath or engagement.

Magistrates may act in adjacent counties &c.

8. That it shall and may be lawful to and for all magistrates of the adjacent counties at large respectively, to execute this act within the several counties of cities or counties of towns in Ireland, except the county of the city of Dublin; and in like manner, that the several magistrates of such counties of cities and counties of towns shall have like powers to execute this act in the adjacent counties at large.

Powers of this act extended to all magistrates.

9. That all the powers and authorities given to, and all duties required from magistrates of counties at large, under and by this act, shall be and are hereby given to, and required from all magistrates of counties of towns, or counties of cities in Ireland.

4 Geo. 4, c. 87, s. 1.—Whereas an act was passed in &c. [50 Geo. 3, c. 102]; and it is expedient that so much of the

who, shall allow the same, shall think fit, and if, on such traverse the issue shall be found for the traverser, such presentment shall be discharged, otherwise the same shall be final and conclusive to all persons.

10. Provided always, that every person or persons applying for such presentment, by himself, herself, or themselves, or by some person or persons for and on his, her, or their behalf, shall, within forty-eight hours after such injury and damage done or committed as aforesaid, or within a reasonable time after he, she, or they, shall be at liberty, give notice thereof unto some of the inhabitants of some town or village near unto the place where such fact shall be committed, and shall, within six days after such fact committed, give notice to the high constable of the barony, and to the churchwardens of the parish where such facts shall be alleged to have been committed, (if such high constable and churchwardens shall respectively reside within such barony and parish,) who are hereby required forthwith to publish the same in the several market-towns of the barony and parish where such fact shall be so alleged to have been committed; and that also, within six days after such notice so given as aforesaid, either the person or persons so injured shall give his, her, or their examination upon oath, or that examination upon oath shall be given by his, her, or their servant or servants, or family, who are in his, her, or their house, or who had the care of his, her, or their habitation, possession, property, goods or chattels, before some justice of the peace of the county inhabiting within the barony where such fact shall be committed, or near unto the same, thereby specifying whether he, she, or they do know the person or persons who committed such fact, or any of them: and if, upon such examination, it shall be confessed that he, she, or they do know the person or persons who committed the said fact, or any of them; that then he, she, or they shall be bound by recognizance to prosecute such offender or offenders by indictment or otherwise, according to the laws of this kingdom.

11. Provided also, that every presentment to be hereafter made by virtue of this act, shall be made at the next assizes after the fact committed, and shall be read in open court; and shall not be made at any other assizes, unless such fact shall be committed so near the time of holding such assizes that due notice cannot be given before the first day of such assizes, according to the direction of this act; in which case it shall and may be lawful for the person or persons, who shall have sustained such injury or damage, to prefer his, her, or their petition, and to obtain such presentment at the next ensuing assizes, after such due notice shall be given as aforesaid.

12. Provided also, that no such presentment shall at any time be removed by carters, or the prosecution thereupon otherwise delayed, than by such traverse as aforesaid, and, that for such time only as shall be necessary for the trial of such traverser; and

10 & 16 G. 2.
c. 21.

Requisites to
be performed
by persons
applying for
presentment.

When such
presentment
shall be
made.

Not to be
removed, or
quashed, or
prosecution
delayed.

4 G. 4, c. 87. rectly, maintain correspondence or intercourse with any society, association, brotherhood, committee, lodge, club or confederacy, or with any division, branch, lodge, committee or other select body, president, treasurer, secretary, delegate or other officer, or member thereof, as such; or who shall, by contribution of money or otherwise, aid, abet, or support any society, association, brotherhood, committee, lodge, club, or confederacy, or any member or officer thereof, as such, shall be deemed guilty of an unlawful combination and confederacy

Not to extend to declarations of societies, if approved by two justices, and registered.

2. Provided always nevertheless, and be it enacted nothing herein contained shall extend to any declaration taken, subscribed, or assented to by the members of any in case the form of such declaration shall have been approved and subscribed by two or more of his majesty's of the peace for the county, county of a city, county of or place, where such society shall ordinarily assemble, and have been registered with the clerk of the peace, or his for such county, county of a city, county of a town, or for which there shall be paid a fee of one shilling, and so but that such approbation of the justices, as aforesaid, shall remain valid and effectual no longer than until the next session for such county, county of a city, county of a place, unless the same shall, on application made by the concerned, be confirmed by the major part of the justice sent at such general session ; and if the same shall not be and there so confirmed, the provisions of this act shall thenceforth extend to such declaration, and to all societies persons subscribing the same, in so far as may relate to which may be done by them, or any of them, subsequent holding of such general session.

**Offenders
may be pro-
ceeded
against, be-
fore two
justices.**

3. That every person who, at any time after the expiration of fourteen days next after the passing of this act, shall, in breach of any of the provisions thereof, be of any such unlawful combination and confederacy this act is described, shall and may be proceeded against such offence in a summary way, either before any two or more of the peace for the county, county of a city, or county town or place where such person shall happen to be, indictment, to be preferred in the county, county of a city, county of a town or place in Ireland, wherein such person shall be committed; and every person being convicted of such offence, on the oath of one or more credible witnesses, by such justices as aforesaid, shall be by them committed to the common gaol or house of correction for the county, county of a city, or county of a town or place, to remain without bail or mainprize for the term of three calendar months; or shall be by such justices adjudged to forfeit and pay the sum of twenty pounds, British currency, as the justices shall seem meet; and in case such sum of money shall not be forthwith paid into the hands of such justices, the

Persons convicted before justices may be imprisoned or fined.

and under their hands and seals, cause the same to be by distress and sale of the offender's goods and chattels, with all costs and charges attending such distress and sale, for want of sufficient distress, shall commit such offender to the common gaol or house of correction of such county of a city, or county of a town or place, as directed, for any time not exceeding three calendar months; every person convicted of any such offence, upon indictment pursuant of law, shall and may be transported for the term of years, in the manner provided by law for transportation of convicts, or shall and may be sentenced to imprisonment with labour, and shall be imprisoned, for any time not exceeding two years, as the court before whom such offender is tried shall think fit; and every such offender, who shall be ordered to be transported or imprisoned, shall be subject and bound to all laws concerning offenders ordered to be transported or imprisoned.

Provided always, and be it enacted, that it shall be lawful for any justices of the peace, by or before whom any person shall be convicted pursuant of this act, of any unlawful oath or confederacy, and such justices are hereby authorized and empowered (if they shall see cause so to do) to mitigate the punishment hereinbefore directed to be inflicted on any offender against this act so convicted as aforesaid, so that the punishment be not thereby reduced to less than one-half of the punishment hereby directed to be inflicted as directed, whether such punishment shall be imprisonment or fine.

Provided also, and be it enacted, that any person who shall be prosecuted before any justice of the peace in a summary way for any offence against this act, and shall be convicted by such justices, shall not afterwards be prosecuted, or be liable to be prosecuted, by indictment or otherwise, for the same offence; and so, in like manner, any person who shall be convicted or acquitted upon any indictment, for any offence against this act, shall not afterwards be prosecuted, or be liable to be prosecuted, before any justices of the peace in a summary way for the same offence.

Provided also, and be it enacted, that nothing in this act shall extend to prevent any prosecution by indictment or otherwise, for any thing which shall be an offence within the true meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been prosecuted for such offence under this act, and shall be convicted or acquitted of such offence; and that no person shall be prosecuted under this act, for having been, before the passing of this act, a member of any society, association, brotherhood, trade, lodge, club, or confederacy, hereby declared to be an unlawful combination and confederacy, if such person shall not in any manner have acted as a member of such society, associa-

4 G. 4, c. 87.

If convicted on indictment, offenders may be transported for seven years, or imprisoned for two years, with hard labour.

Justices may mitigate punishment.

Persons prosecuted, either before a justice, or by indictment, not liable to other prosecution.

Offenders may be indicted as heretofore, if not prosecuted under this act.

Persons not punishable as members of any society, unless they continue to act as such.

15 & 16 Geo. 3.
c. 21.

meetings, on
lawful occa-
sions.

This act to be
read in open
court.

Two justices
may summon
and bind over
persons sus-
pected to be
guilty of
rising &c., in
arms &c.; or
in default,
may be com-
mitted.

number of persons for their lawful occasions, or at any fair or market, or reputed fair or market, or any customary assembly, for innocent sports or recreation not prohibited by, or contrary to any law now in force.

27. That every clause herein contained shall be read publicly in open court, on the second day of every assizes, and the first day of every quarter sessions of the peace in every county of this kingdom.

28. That any two or more justices of the peace, having reasonable cause to suspect any person or persons guilty of any such unlawful rising, assembling, or appearing as aforesaid, or of having been in any unlawful assembly, to the terror of his majesty's subjects as aforesaid, or of intending so to be, may summon, and they are hereby required to summon before them the person or persons so suspected to be guilty, and bind him, her, or them over, by his, her, or their own recognizance, to appear at the next ensuing assizes or general gaol delivery, to be held for the county in which he, she, or they shall reside, to answer such matters as he, she, or they shall then be charged with, and to be of good behaviour in the mean time; and in case of refusal to appear to enter into security as aforesaid, that then such justices of the peace shall have power, by warrant under their hands and seals, to commit every such person or persons to the common gaol of the county, there to remain until such person or persons shall submit to appear and enter into such security as aforesaid, or until discharged by due course of law.

33 Geo. 3, c. 32.—Whereas, by an act passed in this kingdom in &c., [15 & 16 Geo. 3, c. 21,] it is enacted, that persons receiving injury and damage, as therein mentioned, in their persons, habitations, possessions, property, goods or chattels, may sue for and recover satisfaction and amends for the injury, loss, or damage incurred or suffered, at the next assizes for the county where such offence was committed, in manner as therein directed; and whereas assizes are never holden in the county of Dublin, or county of the city of Dublin; and therefore, persons sustaining such injuries, losses, and damages in the said counties, in manner mentioned in the said recited act, are, and have been without the remedy intended for them by the said act; for remedy thereof, be it enacted &c., that all persons who, by virtue of the said recited act, would be entitled to receive satisfaction and amends for such injuries and damages within the county of Dublin and county of the city of Dublin, by presentment of the grand juries of the said counties respectively, shall and may, at the next presenting term in the King's Bench after the offence committed, by exhibiting to the said court of King's Bench such petition as is by the said recited act required to be exhibited to the judge or judges of assize, have compensation made to them for such loss or damages as they shall respectively have sustained within the meaning of the said recited act; and in examining, directing, and acting on such

Persons in
county and
city of Dub-
lin, who have
been injured,
may exhibit
their petitions
to King's
Bench.

petition, the court of King's Bench shall have and exercise the same authority as is, by the said recited act, given to the judges of assize; and the grand juries of the said two counties be hereby required to make presentments upon such petitions respectively, in like manner as the grand juries at assizes are, by the said act, required to make presentments in their counties.

33 G. 3, c. 32.

1 & 2 Will. 4, c. 44, s. 2.—That if any person or persons being or assembling in the manner mentioned in the said recited act of the fifteenth and sixteenth years of his late Majesty King George the Third, or in any other manner whatsoever, shall unlawfully compel, or by force, threats, or menaces, attempt to compel any of his majesty's subjects to quit his, her, or their, dwelling-house, habitation, farm, possession, place of abode, service, or lawful employment; or shall maliciously assault or injure the dwelling-house, place of abode, or habitation of any her person or persons; (a) or shall break into his, her, or their house, habitation, or barn, or outhouse, or cause any door to be opened by threats or menaces; or shall maliciously injure the land, goods, or chattels, or property, (b) real or personal, of any

Compelling any one to quit his home, farm, or employment, assaulting or breaking into any house, injuring or carrying away property; transportation &c.

(a) *Rex v. Taylor and others, King's County Lent Ass. 1832.*—The prisoners were indicted for assaulting and injuring the habitation of *Winifred Kehoe*. It appeared that *M. Kehoe*, her son, having obtained a civil bill decree against one of the prisoners, a party of men came by night to the house of *W. Kehoe*, and demanded the decree. Ten or twelve persons entered the house, where they acted violently and tumultuously, in breaking the doors, windows, and furniture, and firing shots, one of which wounded an individual of the family. Several stones were thrown at the house, and shots fired by those who remained outside; to whom one of the prisoners was heard to say, "don't go or you'll be known." None of the prisoners were proved to have been inside the house, but were all identified as standing outside. The country was proved to be in a state of whiteboy disturbance. *BUSHE, C. J.*, at first doubted whether an indictment could be sustained, the object of the party appearing to have been altogether private, viz., the obtaining the decree. On the following day however, he intimated that he had no longer any doubt; that if disturbances by insurgents be proved to exist, and if the terror excited by them be applied in aid of the commission of any unlawful act, provided that act be accompanied by whiteboy outrages, the offence is made out within the meaning of the act. Verdict—guilty.

An offence is not exempt from the Whiteboy code, because the immediate object proposed is of a private nature.

(b) *Rex v. Cowan, Clare Sp. Com. June, 1831.*—The prisoners were indicted under two repealed sections of the Whiteboy Act (15 G. 3, c. 21, ss. 4 & 5) for maliciously injuring the property of *R. H. Wigmore*, to wit, six acres of pasture land, by digging up the soil and surface thereof. *O'Connell*, for the prisoners, contended that the indictment could not be sustained, under the words of that act, which made it an offence, if any one should maliciously assault, or in any manner whatsoever maliciously injure the habitation, property, goods, or chattels of any other person or persons, and argued that the term "property" could

Turning up land is an offence punishable under the Whiteboy Act, as an injury to property.

1 & 2 W. 4, c.

64.

Sending threatening notices or letters &c.; transportation &c.

The preventing a threatening notice from being taken down, is evidence of the posting of it.

other person or persons; or take or carry away any horse, gelding, mare, or male, or any gun, sword, or other weapon, or any money or goods, or chattels whatsoever, without the consent of the owner; or shall cause the same, or any of the same to be delivered to him or them, by threats or menaces; or shall in any manner whatsoever maliciously dig up, turn up, pull up, or down, prostrate, level, demolish, or injure the lands, or crops growing or sowed, or the walls, palings, hedges, or other houses, or the cattle, goods, or chattels, of any other person or persons; all and every person and persons so offending, being thereof lawfully convicted, shall be liable to be transported beyond the seas for the term of his natural life, or for the term of seven or fourteen years, be imprisoned, or with or without hard labour for any term not exceeding three years, and, if a male, be once, twice, or thrice publicly or privately whipped, if the court shall think fit, in addition to such imprisonment.

3. That if any person or persons shall knowingly write, post, (a) publish, circulate, send, or deliver, or cause or procure to be printed, written, posted, published, circulated, sent, or delivered, any notice, letter, or message, or citing, or tending to excite any riot, tumultuous or seditious meeting or assembly, or unlawful combination or confederacy, threatening any violence, injury, or damage, (b, upon any condition, or in any event, or otherwise, to the person or property, real or personal, of any person whatever, or demanding

not be extended, so as to include any injury to the soil and the hold.—JENK, J. said that a case had been furnished to him by a gentleman of the bar, in which the late Baron George had convicted a man under this act, for a similar offence. That he had consulted the other judges of the King's Bench, and also Mr. Baron Pennington; and that all were of opinion that it came within the provisions of the act. Mr. Justice Burton had observed, that the term "property" was, of itself, large enough to include land; and that being joined with "goods and chattels," it was to be reasonably inferred, that injuries to land were intended to be thereby provided against. The learned Judge (JENK) had no doubt upon the point.

(a) *Rez v. Whelan, Queen's County Lent Ass. 1833.*—The prisoner was indicted for posting, publishing, and circulating a threatening notice in the town of Maryborough. The prosecutor, on a Sunday, saw a paper, which was proved to be the notice in question, on a gate in Maryborough. He read it, and was proceeding to take it down, when the prisoner, who was standing hard by, prevented him by force from doing so. Counsel for the crown submitted that this was evidence to go to the jury of a publication by the prisoner; to which DOMERTY, C. J. assented; and the prisoner was convicted.

(b) To sustain an indictment for sending a threatening notice, it is necessary to show a connexion between the transaction in question and an unlawful combination or disturbance, so as to give it the character of a Whiteboy offence.—*Rez v. Whelan, Monaghan Spr. Ass. 1833, per BUSHE, C. J.*

oney, arms, weapons or weapon, ammunition, or other
or things whatsoever, or directing or requiring any person
not to do any act, or to quit the service or employment
person, or to set or to give out any land(a); every per-
offending, shall be liable to be transported beyond the seas
term of seven years, or to be imprisoned, with or without
bour, for any term not exceeding three years, and, if a
o be once, twice, or thrice publicly or privately whipped,
ourt shall think fit, in addition to such imprisonment.

1 & 2 W. 4, c.
44.

That all and every person and persons who shall assist,
r succour any person or persons to commit any of the
s mentioned in this act, for which sentence of transporta-
ay be awarded; or shall knowingly excite, encourage, or
e, or shall solicit, ask, or require any person or per-
hatsoever, or shall endeavour to compel or induce any
or persons, to join in the commission of any offence men-
in this act, for which sentence of transportation may be
ed; shall be liable to be transported beyond the seas for
m of seven years, or be imprisoned, with or without hard
, for any term not exceeding three years, and, if a male, to
e, twice, or thrice publicly or privately whipped, if the
hall think fit, in addition to such imprisonment.

Abetting or
encouraging
others to
commit any
of the above
transportable
offences;
transporta-
tion.

That it shall and may be lawful for the court, if such court
o think fit, after sentencing any person to be transported
risoned as aforesaid, immediately on such sentence, to
and cause such person so sentenced to be transmitted out
county, county of a city, or county of a town, wherein the
tion shall take place, to any of his majesty's gaols, prisons,
ks, or other places of confinement, in any part of Great
a or Ireland, there to remain till he or they shall be trans-
, or to be imprisoned therein, according to the adjudication
court.

Court may
order persons
convicted to
be removed
out of the
county.

6 Will. 4, c. 48, (b) s. 1.—Whereas heinous and system-
atrages and disturbances of the peace have from time to
revealed in several parts of Ireland, and it is expedient
vide for the speedy and effectual prosecution and suppress-
f such offences; be it therefore, &c., that it shall and may

Rex v. Brian, Carlow Lent Ass. 1833.—The prisoner was
ed under the 1 & 2 Will 4, c. 44, s. 3. The evidence was
t he went alone into the house of the prosecutor by night,
im he was Captain Rock, and enjoined him to re-let, to a
s named *Quinlan*, the farm which he (*Quinlan*) had given up
five years before. While in the house, taps were heard at
indows, and whistling in various directions outside. The
ry was proved to be in a state of Whiteboy disturbance.
el for the prisoner suggested that one person could not be
ted under the indictment; but Doherty, C. J., held, that,
the words of the statute, "*person or persons*," the offender
clearly within it.

A Whiteboy
offence may
be committed
by a single
individual, if
the district be
shown to be
disturbed.

*Entitled, "An act for the better prevention and more speedy
ment of offences endangering the public peace in Ireland."*
continue in force until the 31st of August, 1840.—s. 17.

s. 4 W. 4, c.
24.

Lord Lieutenant in Council may order an extraordinary court of sessions to be holden for any county in Ireland.

Such court to have powers of any court of oyer and terminer &c.

Sheriffs and other officers bound to attend it.

Prosecutors, offenders, witnesses &c., bound to attend thereof, on receiving a written notice to that effect.

be lawful to and for the lord lieutenant of Ireland, by order of the concurrence of his majesty's privy council in Ireland, from time to time, as occasion shall require, to order and direct that an extraordinary court of general sessions of the peace shall be holden in and for any county in Ireland, at such place or places therein, and at such time or times, as such lord lieutenant and council may deem proper; and such lord lieutenant shall thereupon nominate and appoint one of his majesty's sergeants at counsel to preside at any such sessions or any adjournment thereof, and act as chairman thereof; and such sergeant or counsel, so long as he shall continue to hold the said office, shall, without further appointment or commission, have all the powers of a justice of the peace, and be, to all intents and purposes, a justice of the peace in, of, and for the county in which such extraordinary court of sessions of the peace shall be holden; and shall receive such sum, not exceeding ten guineas for each day during which he shall be so engaged, as to the lord lieutenant shall seem fit.

2. That each such court shall have and exercise all rights, powers, jurisdictions, privileges, authorities, functions, and capacities appertaining, incident, or belonging to any court of oyer and terminer and general gaol delivery, or to any court of general quarter sessions of the peace: provided, that no person shall be indicted or tried before such court, for any offence rendering the person convicted thereof liable to the punishment of death: and that every justice of the peace, coroner, clerk of the crown, and clerk of the peace, and other person who may have any recognizance, information, inquisition, examination, deposition, or other document which would have been returnable to the next court of oyer and terminer and general gaol delivery, or general or quarter sessions for the same county, shall return the same to the said extraordinary court holden in pursuance of such order and direction, if relating to any offence or matter cognizable by such court: and that all sheriffs, clerks of the crown and of the peace, constables, and other officers, bound to attend at any sessions of the peace or assizes, shall be in like manner bound to attend at such courts to be holden under the provisions of this act, and obey the orders thereof.

3. That all prosecutors, traversers, offenders, witnesses, and others, who shall be bound by recognizance or otherwise to appear at any ordinary sessions of the peace or assizes, or other court of criminal jurisdiction for such county, shall, upon being duly served, ten days previous to the holding of such extraordinary court of sessions, with a notice or summons on behalf of his majesty, either personally, or by leaving the same at his, her, or their usual or last place of abode, attend at such extraordinary court of sessions, and prosecute, abide trial, appear, or give evidence at the same, in like manner as any such person would be bound to do at any court specified in any such recognizance, or at which such person would be otherwise bound to appear; and in case of default of any such person in that behalf, and

terms thereof.

[The clerk of the peace of the county where the court is to be held shall give notice of it in the same way as the quarter sessions, the lord lieutenant shall direct.]

That each such extraordinary court of session shall continue to sit, and shall adjourn from time to time and place to place as convenience may require, until such day as shall be fixed for the termination thereof, in and by a like order to be made by the said lord lieutenant of Ireland in council; and for the purposes of each such session, and during the continuance thereof, such precepts, writs, warrants, processes, and means for enforcing the attendance thereof of grand jurors, jurors, witnesses, traversers, offenders, and other persons, and may be issued and returned, and juries impanelled, in the manner as in ordinary cases of proceeding at any court of criminal jurisdiction; provided always, that the names of the persons returned to serve on the grand jury at any such session, shall be taken from the "special jurors' list" of such county.

That no traverse in prolix shall be received or allowed at such court; but that every person charged with any offence shall plead forthwith, and the trial be directly proceeded with, unless the court shall, upon sufficient matter disclosed by the defendant, think fit in its discretion to postpone such trial, according to the course of any court of oyer and terminer, general gaol delivery, or general or quarter sessions, either to any subsequent court, or adjournment of such extraordinary court, or to any court of oyer and terminer and general gaol delivery, or general or quarter sessions of the peace, or adjournment thereof, in the same county.

Court may adjourn, until termination of its sitting, as fixed by order of lord lieutenant in council.

Grand jury.

Offenders to be tried forthwith, unless court shall otherwise order.

5 & 6 W. 4, c.
48.

Lord Lieutenant, on presentment of grand jury, may direct such court to issue a notice, enjoining the inhabitants of places therein specified, to remain within their habitations at night.

9. And whereas infractions of the law and violations of the public peace are frequently contrived and committed by nocturnal assemblies of disorderly persons, and it is desirable to provide, under proper regulations, some check to such meetings, be it therefore enacted, that if the grand jury impanelled at any such sessions to be holden under this act, shall make a presentment to the court, that a necessity exists for taking measures to suppress nocturnal meetings; such presentment shall be transmitted by the chairman to the said lord lieutenant, together with the opinion of the court thereon; and it shall and may be lawful upon lawful for the said lord lieutenant, with the advice of his majesty's privy council, to authorize and direct such court to issue a notice, enjoining the inhabitants of such county, or any part thereof, or of any adjacent county, to be specified therein, to take and remain within their respective lodgings and habitations at all hours between one hour after sunset and sunrise, from and after such day as shall be named and specified therein for that purpose; and warning them that all persons who may be found abroad or absent from their respective habitations during such hours, save upon some lawful and proper occasion, will be liable to be punished as guilty of an offence, under the provisions of this act; and such notice shall be printed and posted in some conspicuous place in each town and village within each county or half barony of such county, or if the same be a county of a city or town, on the principal places for posting notices within the same.

Any person found abroad in the night, after such notice, in any place specified therein, shall be deemed guilty of a misdemeanor.

10. That any male person, who shall be between one hour after sunset and sunrise, at any time after the day specified in any such notice, abroad in any field, road, or elsewhere, out of his habitation or lodging, within any county or district specified in such notice, save upon some lawful and proper occasion, shall be deemed to be guilty of a misdemeanor; and that any magistrate or constable of police who shall find any person so abroad, within such hours, and within such county or district, shall, at his discretion, have power and authority to apprehend such person; and he shall be committed and detained until trial, unless held to bail by some person thereto authorized.

11. [At any time after the day named in the notice, the court may, by warrant signed by the chairman, and countersigned by the clerk of the peace, authorize any magistrate or chief constable of police, at any time, within such hours, and within such county or district, to require any inmate of a house to show himself: and on failure for ten minutes, he shall be deemed absent, and his absence certified to the court. Every owner of any such house shall, in twenty-four hours after demand by a magistrate or chief constable, deliver a list of his inmates; penalty, ten shillings, or a week's imprisonment, on summary conviction before a magistrate.]

12. [The warrant shall be backed, if executed in any county out of the ordinary jurisdiction of the court.]

13. That it shall be lawful for the court to which such certificate shall be returned, to summon and require all persons

Court may examine on oath, persons absent from

thereby certified to have been absent from their respective dwellings, to appear before such court, and for such court to examine such persons, or any other person who may be produced before them upon oath as to such absence and the cause thereof: and if it shall be proved that any such person was duly required to appear by the person or persons so authorized as aforesaid, and if any such person so summoned shall not appear before such court; or if, upon such examination, the non-compliance of such person with the demand of the person or persons so authorized as aforesaid shall not be explained to the satisfaction of such court; or if it shall appear to such court that such person was so absent from his dwelling as aforesaid without some lawful and proper excuse or occasion; such person shall be deemed to be guilty of an offence within this act; and the court shall have power to convict him summarily thereof, and, in case of a first offence, to commit him to such place of confinement within the county as such court shall think proper, for any period not exceeding one month, or to impose upon him a fine not exceeding one pound, or both; and for any subsequent offence, to award a like imprisonment, for a period not exceeding three months, or to impose a fine not exceeding five pounds, or both, and also to order that the party convicted shall give security for his good behaviour for twelve calendar months, or, in default thereof, be liable to an additional imprisonment for any term not exceeding one month.

5 & 6 W. 4, c. 48.

their dwellings, and may imprison and fine any person convicted thereof.

14. That any person who shall knowingly give false information to any person authorized by such warrant; or shall obstruct any person acting thereunder in the execution thereof, after notification of the object and nature thereof; shall be deemed to be guilty of a misdemeanor.

Misleading or obstructing execution of warrant.

15. [The words "lord lieutenant of Ireland," shall include lords justices, or other chief governor or governors for the time being; and "county," shall extend to and include any riding, county of a city, county of a town, or city and county; and see the general rule, post, 362.]

SECTION 4.

Making and using Offensive Weapons.

47 Geo. 3, sess. 2, c. 54, s. 1. [Enacts, that every one having arms, not registered according to the act 36 Geo. 3, c. 20, shall, at the sessions of the peace next after the passing of this act] respectively deliver, or cause to be delivered, in open court, to the justices then present, a written notification, signed by him or her, specifying therein the place, parish, barony, or townland in which he or she shall be then resident; or if in a county of a town or city, the parish, townland, or street in which he or she keeps arms, and the place or places where the same are usually kept, and the number and description of such arms, accompanied by an affidavit sworn before some justice of the peace for such county, town, or city, by the person signing such notification, that such notification is true, and that he or she believes that he or she is

Mode of registering arms.

47 G. 3, st. 2,
c. 54.

by law entitled to keep arms ; which notification shall be read aloud in open court ; and if the justices sent, or the majority of them, shall consider the person such notification to be by law entitled to keep arms, an fit and proper person to keep arms, they shall there and deliver to such person a license, authorizing such keep arms, and specifying therein ; if they shall think number and description of arms which such license is to him or her to keep, and shall deliver such notification, at the foot or back thereof the number and description of the same shall be specified in the license, to the acting clerk of the peace ; who shall register the same in books, (or in a county of a town or city,) one whereof to be kept in every barony or half barony in the county, in alphabetical order with the names and places of abode of every person manifesting such notification, according to their respective baronies or halves ; where the place of abode shall be specified to be in a half barony ; for which no fee or reward whatever shall be received by such clerk of the peace ; which book shall be kept by such clerk of the peace at his office in the county, town, or city ; and shall, at all seasonable times, be open to the view of any justice of the peace of such county, town, or city, from which every such justice shall be at liberty, from time to time, to make such extracts as he shall deem fit ; always, that if the majority of the justices so assembled at sessions of the peace, shall refuse to grant such license to a person who is by law entitled to keep arms, the person, to whom such license is refused, may appeal from the decision of the justices, if in the county of any city or town, to the next sessions of any county at large, adjoining to the county, city or town ; and if in a county at large, then to the next session of the same county.

In case of refusal of justices to register arms, persons aggrieved may appeal.

Justices at quarter sessions may grant licenses for keeping arms.

2. That it shall be lawful for the justices of the peace, on an application in writing, signed by any person, for a license to keep arms, specifying in like manner his or her residence, accompanied by an affidavit, sworn by the person signing the application, that he or she believes he or she by law is entitled to keep arms, to sign and deliver, at any sessions of the peace to be held for the county, town, or city, in which such person resides, a license, authorizing such person to keep arms, specifying therein, if they shall think fit, the number and description of arms which such license is to authorize him or her to keep ; and which application, with the number and description of arms endorsed thereon, if the same shall be specified in the application, shall be delivered by them to the acting clerk of the peace, who is required to register the same, in like manner as a notification for which no fee or reward whatsoever shall be received by the clerk of the peace.

Change of residence shall be certified to clerk of the peace.

3. That whenever any person who shall have obtained a license to keep arms under this act, shall, during the continuance of such license, change his or her place of abode ;

He deliver a certificate of such change, specifying the house to which such person shall have removed, to the clerk of the peace for the county, town, or city, in which such person was resident at the time of granting such license; and such certificate shall be registered in like manner as the notifications and applications used by this act.

47 G. 3. st. 2,
c. 54.

That any person who shall, after the said sessions of the peace for the county, town, or city where he or she shall reside, shall be held next after the passing of this act, have in his or her custody any arms that shall not have been registered as aforesaid, shall, upon being convicted thereof, on the testimony of credible witnesses on oath before any magistrate, for the first offence, forfeit the sum of ten pounds, to be levied by sale of his goods and chattels of such person, by the warrant of such magistrate, or, in default of payment, be imprisoned by such magistrate for the space of two months; and for the second and every other offence, shall forfeit the sum of twenty pounds, to be levied in like manner, or, in default of payment, be imprisoned for the space of four months; and all such arms shall be forfeited to the use of his majesty, his heirs and successors.

Penalty on
persons
having un-
registered
arms.

[Persons licensed shall, when required by any justice of the peace, deliver, on oath, an inventory of their arms.]

That it shall and may be lawful for the justices of the peace, at any sessions, to withdraw any license theretofore given, and cause the name of such person, as they in their discretion shall at such sessions deem an improper person to be intrusted with arms, to be erased out of the registry of arms, and cause a notice to be served on such person, or to be posted on his dwelling-house specified in the said registry to be the residence of such person, or, in case of his or her having previously certified to the clerk of the peace of the county that he or she had removed his or her dwelling-house, then on the house to which all in such certificate have stated that he or she had removed, signed by any one of the justices of such session, and by the clerk of the peace, under the authority of such justices, or a majority of them in such sessions assembled, that such license is withdrawn.

Justices may
withdraw
licenses,
giving notice
thereof to the
parties.

That if any person, on whom such notice shall be served, shall not, within forty-eight hours after service of such notice, deliver his arms, or her, or at his or her dwelling-house, as aforesaid, to the next resident magistrate, or some neighbouring magistrate, at his place of abode, all such arms as were so registered, or account for the same to the satisfaction of such magistrate, such person shall be deemed to have in his or her custody such arms that have not been registered; and shall be subject and liable to the forfeiture and punishment hereinbefore enacted in respect of such offence; except where it shall appear to the magistrate before whom such offence is prosecuted, that the delay was from accidental circumstances, and not from wilful ne-

Persons,
after such
notice, to de-
liver arms to
next justice,
or be pu-
nished as for
having un-
registered
arms.

47 G. 3, st. 2,
c. 54.

Justices may
enter houses
and search
for unregis-
tered arms.

(a)

Proviso.

Blacksmiths
shall register
their forges.

Sessions may
withdraw
licenses from
blacksmiths
making pikes.

8. That it shall and may be lawful for any justice^(b) of the peace, where he shall have reasonable grounds of suspicion, or for any person duly authorized thereto by warrant under the hands and seals of any two justices of the peace, (which warrant shall not be granted, except on the information given to such justices on the oath of one or more credible witnesses or witnesses, that, to the best of his or their knowledge or belief, such person is unlawfully in possession of arms,) to search for arms in the house or houses or grounds of any person in Ireland, not having made such notification, or obtained such license as aforesaid, and also in the house or houses or grounds of any person who, having made such notification or obtained such license, shall refuse or neglect, for forty-eight hours, to deliver such list or inventory^(c), or who shall have delivered a false list or inventory, or whose license shall have been withdrawn as aforesaid; and in case admission shall be refused, or not obtained within a reasonable time after it shall have been first demanded, to enter, by force into every such house, and every part thereof; and if any arms shall be found in the possession of any such person respectively, save in the house of a person giving such list or inventory, and if any arms shall be found in the house of such person giving such inventory, and not specified therein, to seize and carry away the same for the use of his majesty. Provided always, that nothing in this act contained shall affect any persons serving in his majesty's regular or militia forces, or in any yeomanry corps, or any privy councillor, or member of parliament, or peace officer, in respect to any arms that they may have in their custody.

9. And whereas it is necessary to provide more effectually against the making of pikes, and such like offensive weapons; be it therefore, &c., that no person or persons whatsoever, after the passing of this act, shall exercise the trade of a blacksmith, who shall not have previously registered his name, and the place where his forge is situated, at some sessions of the peace for the district in which such forge is used, and shall also have obtained a license from the justices at such sessions, authorizing him to use and follow the trade of a blacksmith; which said registry and license is to be made, kept, and granted, in manner and form as the registry of arms, and license for using arms, hereinbefore mentioned.

10. That it shall and may be lawful for the justices of the peace, or the majority of them, at any sessions of the peace, to withdraw such license from any blacksmith, if it shall be satisfactorily proved on oath to them, that such blacksmith hath made, or knowingly suffered to be made in his forge, any pike or pike-head, after he shall have so obtained a license, and registered his

(a) But see 50 Geo. 3, c. 109, s. 2. *Post*, 182.

(b) *Two justices*, by 50 Geo. 3, c. 109, s. 3.

(c) See 50 Geo. 3, c. 109, s. 4. p. 183.

being thereof lawfully convicted, be adjudged a felon, and
transported for seven years. Provided always, that nothing
contained shall extend, or be construed to extend, to any
having or making such weapons as aforesaid, in the ser-
vice for the use of his majesty, his heirs and successors.

That it shall and may be lawful for any justice(b) of the
of any county, city, or town in Ireland, within his jurisdic-
tion where he shall have reasonable ground of suspicion, or for
reason duly authorized by warrant under the hands and seals
justices, (which warrant shall not be granted except upon
information upon oath of one or more credible witness or
sworn, that such weapons, to the best of his or their
edge or belief, are in any house or place,) to search for
pike-heads, daggers, or dirks, in any such house or place :
any such shall be found, it shall and may be lawful for such
justice, or the person so authorized, to seize and carry away
the same, to the use of his majesty : and the person or persons,
in possession, custody, or keeping, such weapons shall be
being thereof convicted by due course of law, shall,
on the first offence, be imprisoned for the space of twelve
calendar months ; and for the second and every other offence,
be adjudged a felon, and be transported for seven years,
unless such person or persons shall prove to the satisfaction of
a court before which he, she, or they shall be tried for the
offence, that such weapon as aforesaid was in his, her, or
custody or keeping, without his, her, or their knowledge,
consent, or connivance.

That whenever any magistrate or other person shall
seize or carry away any arms or weapons as aforesaid. such

Justices may
enter houses
to search for
pikes &c.(a)

Penalty on
persons
having pikes.

Second
offence ;
felony.

Arms seized
shall be sent
to the king's

47 G. 3, st. 2,
c. 56.

Penalties to be levied by distress, and paid to the county treasurer.

Justices shall return to sessions, the names of all persons employed on search.

Two justices, on suspicion that arms are unlawfully in possession of any person, shall report to lord lieutenant, who may authorize a justice to search for and seize such arms.

his or their chief secretary, a written account of the number and nature of such arms or weapons, and of the place where, and the person from whom, such arms or weapons were respectively seized.

14. That all the pecuniary penalties in this act imposed, shall be raised and levied by sale of the goods of the person offending, by warrant under the hand and seal of any justice of the peace in and for the county in which such offence shall be committed; and the penalties so to be levied shall be by such justices or justice, handed over to the treasurer of the county in which such sums are levied, to be applied to such purposes as the grand jury, at any ensuing assizes, shall think proper to present.

15. That whenever any search shall be made under this act, by any person authorized by any warrant of any justice of peace, under the authority of this act; the justices of peace authorizing and directing any person or persons to make such search, shall make a true and faithful return of the same, and names of all and every person or persons so authorized to make such search, and their quality and descriptions, to the general session of the peace which shall be held next after such search.

50 Geo. 3, c. 109, s. 1. [Recites 47 Geo. 3, st. 2, c. 56, and enacts that it shall be continued.]

2. Provided always, and be it enacted, that whenever any two justices of the peace in any county, county of a city, or town in Ireland, shall have any reasonable grounds of suspicion, that any person or persons within such county, or county of a city, or town, is or are unlawfully in possession of arms, or that any pikes, pike-heads, daggers, or dirks, are in any house or place within such county, county of a city, or town, such justices of peace shall forthwith transmit to the lord lieutenant, or other chief governor or governors of Ireland for the time being, or his or their chief secretary, a report signed by such two justices, of such suspicion, with the grounds and reasons of such suspicion; and, upon the receipt of such report of such two justices, it shall and may be lawful for such lord lieutenant, or other chief governor or governors of Ireland for the time being, or his or their chief secretary for the time being, by warrant under his or their hand or hands, to authorize, and require such justices, or any other justice, to search, or cause search to be made, within and throughout such county, county of a city, or town, or within any parish, barony, or half barony within such county, county of a city, or town, as shall be specified in such warrant, for any arms, pikes, pike-heads, daggers, or dirks, in manner directed by the said recited act, and it shall not be lawful for any justice of the peace in any county, county of a city, or town in Ireland, to authorize, or join in authorizing any person, to make any search under the said recited act for any arms, pikes, pike-heads, daggers, or dirks, before or until such warrant shall have been granted by the lord lieutenant or other chief governor or governors of

land for the time being, or his or their chief secretary, for the purpose, anything in the said recited act^(a) to the contrary notwithstanding.

50 G. 3, c.
109.

3. That so much and such parts of the said recited act as enact or enact that it shall be lawful for any justice of the peace, when he shall have reasonable ground of suspicion, to search for arms, pikes, pike-heads, daggers, or dirks, in any house or place in Ireland, shall be and the same is and are hereby repealed; and that from and after the passing of this act, it shall and may be lawful for any two justices of the peace, within their jurisdiction, (upon information given to such justices, on the oath of one or more credible witness or witnesses, that, to the best of his or their knowledge and belief, any person is lawfully in possession of arms, or that any pikes, pike-heads, daggers, or dirks, are in any house or place, but not otherwise) to search for arms, pikes, pike-heads, daggers, or dirks, in the house or premises of any person, or in any house or place mentioned in such information, in manner, and under the regulations in the said recited act contained.

Two justices, instead of one, as in 47 G. 3, may search for arms.

4. That whenever any person making notification of his having arms, and obtaining a license, as in the said act is provided, shall have been once required, under the said recited act, by any justice of the peace, within whose jurisdiction such person shall reside, to deliver to such justice an inventory of all arms in his or her possession; it shall not be lawful for the said justice, or any other justice within whose jurisdiction such person shall dwell, to make any further or other requisition from time to time; nor shall such person be compelled to deliver such lists from time to time, as often as he shall be required by any justice under the said recited act, anything in the said recited act to the contrary notwithstanding. Provided always, that it shall be lawful for the justices of the peace, or the majority of them, at any session of the peace, from time to time to require such list from any person within their jurisdiction, having made such notification and obtained such license as aforesaid; and such person shall deliver such list from time to time accordingly, when and as often as such person shall be so required by such justices at any such session.

Persons having once delivered an inventory of arms, shall not be called on to do so again, save by the order of justices in quarter sessions.

10 Geo. 4, c. 47, s. 2.—That it shall and may be lawful to and for the lord lieutenant or other chief governor or governors of Ireland, by any order to be signified by his or their chief secretary, or, in the absence of such secretary, then by the under-secretary, to remit or mitigate any penalty, forfeiture, or punishment, which may have been, or may be incurred by any person or persons, for any offence against the said recited acts,^(b) or either of them, upon such terms, and subject to such conditions,

Lord lieutenant may remit or mitigate penalties.

(a) *Viz.* 47 Geo. 3, sess. 2, c. 54, s. 11, *ante* 181.

(b) 47 Geo. 3, sess. 2, c. 54, and 50 Geo. 3, c. 109.

15 R. 2, c. 2.

county, and go to the place where such force is made. (3) And if they find any that hold such place forcibly, after such entry made, they shall be taken and put in the next gaol, there to abide convict by the record of the same justices or justice, until they have made fine and ransom to the king. (4) And that all the people of the county, as well the sheriffs, as other, shall be attendant upon the same justices, to go and assist the same justices to arrest such offenders, upon pain of imprisonment, and to make fine to the king. (5) And in the same manner it shall be done, of them that make such forcible entries in benefices, or offices of holy church.

8 Hen. 6, c. 9, s. 1, Eng.—[Recites 15 Rich. 2, c. 2, Eng.]

2. And for that the said statute doth not extend to entries in tenements, in peaceable manner, and after holden with force, nor if the persons which enter with force into lands or tenements, be removed and voided before the coming of the said justices or justice, as before, nor any pain ordained, if the sheriff do not obey the commandments and precepts of the said justices, for to execute the said ordinance; many wrongful and forcible entries be daily made in lands and tenements by such as have no right; and also divers gifts, feoffments, and discontinuances sometimes made to lords, and other puissant persons, and extortioners within the said counties where they be conversant, to have maintenance, and sometimes to such persons as be unknown to them so put out, to the intent to delay and defraud such rightful possessors of their right and recovery for ever, to the final disherison of divers of the king's faithful liege people; and likely daily to increase, if due remedy be not provided in this behalf. (2) Our lord the king considering the premises, hath ordained, that the said statute, and all other statutes, of such entries or alienations made in times past, shall be holden and duly executed. (3) Joined to the same, that from henceforth, where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made within the same county where such entry is made to justices of the peace, or to one of them, by the party grieved, that the justice or justices so warned, within a convenient time, shall cause, or one of them shall cause the said statute duly to be executed, and that, at the costs of the party grieved.

The 15 Rich. 2 confirmed. In case of any forcible entry or detainer, a justice shall cause it to be executed.

Justices empowered to restore premises to former possessor.

3. And moreover, though that such persons making such entries be present, or else departed before the coming of the said justices or justice, notwithstanding the same justices or justice, in some good town next to the tenements so entered, or in some other convenient place, according to their discretion, shall have, or either of them shall have authority and power to inquire, by the people of the same county, as well, as of them that make such forcible entries in lands and tenements, as of them which the same hold with force.

or aiding, assisting, or abetting any such assembly or as aforesaid: and it shall be lawful for the justice of the peace to arrest any such person, or before whom any person arrested shall be brought, to commit such person for trial for any offence, under the provisions of this act, unless such person shall give sufficient bail for his appearance at the next, or general or quarter sessions of the peace, to answer any indictment which may be preferred against him, for any offence against this act in England and Ireland; and every such person shall be arrested, and dealt with according to the law and practice of that part of the United Kingdom, in the case of a bailable offence.

Provided also, and be it further enacted, that nothing in this act contained shall extend to prevent any prosecution, by indictment or otherwise, for anything which shall be an offence against the intent and meaning of this act, and which might have been prosecuted, if this act had not been made, unless the person shall have been prosecuted for such offence under this act, and convicted or acquitted of such offence.

Provided always, and be it further enacted, that no person shall be prosecuted by virtue of this act, for anything done or omitted contrary to the provisions herein-before contained, unless such prosecution shall be commenced within six calendar months after the offence committed.

30 G. 2, c. 1
G. 4, c. 1.

Offenders may be prosecuted, as if this act had not been made.

Limitation of prosecutions.

SECTION 4.

Forcible Entry.

h. 2, c. 7, Eng.—And also the king defendeth, that henceforth make any entry into any lands and tenements in case where entry is given by the law; and in such case with strong hand, nor with multitude of people, but peaceable and easie manner. (2) And if any man henceforth do to the contrary, and thereof be duly convicted, he shall be punished by imprisonment of his body, and thereof shall be at the king's will.

13th. 2, c. 2, Eng.—Item, it is accorded and assented, that all ordinances and statutes made, and not repealed, of them which concern entries with strong hand into lands and tenements or possessions whatsoever, and them hold with force, and those that make insurrections, or great ridings, riots, or assemblies, in disturbance of the peace, or of the law, or in affray of the people, shall be holden and shall fully executed. (2) Joined to the same, that at such time that such forcible entry shall be made, and committed, as aforesaid, to the justices of peace, or any of them, the same justices or justice take sufficient power of the

Making forcible entry, punishable by fine and imprisonment.

Duties of justices as to forcible entries.

• Hen. 6, c. 9.

In cases of feoffment, after a forcible entry or detainer, disseisee may have action of trespass, and recover treble damages.

Proviso for persons three years in possession.

6. And moreover, if any person be put out or disseised of any lands or tenements in forcible manner; or put out peaceably, and after holden out with strong hand; or, after such entry, any feoffment or discontinuance in any wise thereof be made, to defraud and take away the right of the possessor; that the party grieved in this behalf shall have assise of Novel Disseisin, or a writ of trespass against such disseisor. (2) And if the party grieved recover by assise, or by action of trespass, and it be found by verdict, or in other manner by due form in the law, that the party defendant entered with force into the lands and tenements, or them, after his entry, did hold with force, that the plaintiff shall recover his treble damages against the defendant. (3) And moreover, that he make fine and ransom to the king; and that mayors, justices or justice of the peace, sheriffs and bailiffs of cities, towns, and boroughs having franchise, have in the said cities, towns, and boroughs, like power to remove such entries, and in other articles aforesaid rising within the same, as the justices of peace and sheriffs in counties and countries aforesaid have.

7. Provided always, that they which keep their possessions with force in any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued their possessions in the same by three years or more, be not endamaged by force of this statute.

10 Car. 1, sess. 3, c. 13, s. 1.—Whereas there is one good act made and established in England, in the eighth year of the reign of King Henry the Sixth, against such persons as should make forcible entries into lands, tenements, and other possessions, or them should forcibly hold; and one very good proviso or clause in the said act contained, as insueth, viz.: “Provided always, that they which keep their possessions with force in any lands and tenements, whereof they or their auncestors have continued their possession in the same by three years or more, be not endamaged by force of the said statute;” and whereas divers of the king’s majesty’s good and loving subjects, and their auncestors, or those whose estate they have for many years together, above the space of three years or more, have been in the quiet possession of their dwelling-houses, and other, their lands and possessions; and now of late, divers of his majesty’s said subjects, having entries made upon their possessions, having had such quiet and long possession, for disturbing of such entries, and for keeping of their possessions against such entrers, by colour of indictments of forcible entry or forcible keeping possession found against them, by means of the oaths of such entrers, have been removed and put out of their dwelling-houses and other their possessions, which they have quietly held by the space of three years together, or longer time, next before such indictments found against them, against the true meaning and intent of the said proviso, or clause contained in the said act; for remedy

inconvenience, and for true declaration and explanation therein, be it ordained, declared, and enacted, by the of this present parliament, that no restitution upon any of forcible entry, or holding with force, be made unto any person or persons, if the person or persons so indicted hath had the occupation, or hath or have been in the quiet possession, by the space of three whole years together next before such indictment so found, and his, her, or their estate therein not ended nor determined; which the party shall and may allege for stay of restitution; and restitution untill that be tried, if the other will deny or traverse and if the same allegations be tried against the same persons so indicted, then the same person or persons shall, to pay such costs and damages to the other party, as assessed by the judges or justices before whom the same be tried; the same costs and damages to be recovered and is usuall for all costs and damages contained in judgments in other actions.

That such judges, justices, or justices of the peace, as, by any act or acts of parliament now in force, are authorized and enabled, upon inquiry, to give restitution of possession unto tenants of any estate of freehold of their lands or tenements which shall be entered upon with force, or from them dispossessed by force, shall, by reason of this present act, have the same authority and ability, from henceforth (upon trial of such forcible entries or forcible withholding before them so found,) to give like restitution of possession unto tenants for years, tenants by copy of court roll, guaranties, knights' service, tenants by elegit, statute merchants and lands or tenements by them so holden, which shall be taken possession of by force, or holden from them by force.

That all and every justice, and justices of assize, shall hereafter, in their several circuits respectively, have the same power and authority, to all intents and purposes, to inquire, to determine of all forcible entries and forcible holding, and other offences, as well against the said statute of octavo of Henry the Sixth, as against this present statute, and to give restitution of possession in all cases, as any other judge or justices of the peace could or may doe by this act, or by any other statute of force within this realm.

3, c. 24, s. 64.—And whereas great outrages are committed in many parts of this kingdom by desperate persons who, assembled in great numbers and strongly armed, and without any title, take and withhold the possession of lands, and oppose the execution of process of the law for giving or quieting such possession, in defiance of the civil law for remedy whereof, be it enacted by the authority afore-
said, if any person or persons shall, after the passing of this act, *forcibly and without due process of law*, take the possession of any land, or tenement, and forcibly and without due

10 Car. 1, st.
3, c. 13.

On indictments for forcible entry, restitution shall not be awarded, if the defendant have had quiet possession for years before, and his estate be not determined.

Upon indictments for forcible entry, restitution may be awarded to tenants for years, &c., as has heretofore been done to tenants of freehold.

Justices of assize may inquire of offences against 8 H. 6, *Eng.*, and this act.

Forcibly taking or keeping possession, or resisting the

26 G. 3, c. 24.

process of
law for
giving pos-
session,
felony.

Person prose-
cuted or
indicted,
shall, by pro-
clamation, be
ordered to
surrender ;
and in case of
refusal, be
deemed a
felon.

Harbouring
such felons,
felony.

Printed pro-
clamation
shall be evi-
dence.

authority by law, hold such possession so taken by force ; or shall forcibly oppose or resist the execution of any process of the law, for giving or quieting the possession of any house, land, or tenement ; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and be transported to some of his majesty's plantations or settlements in America, or to some other place or places not in Europe ; and the court before whom such person or persons shall be brought, shall have power and authority to order such offenders to be transported for the term of seven years, in like manner as other felons are directed to be transported by the laws of this realm.

65. That from and after the passing of this act, if any person or persons shall be presented or indicted by the grand jury, at any assizes or general quarter sessions of the peace in this kingdom, for having committed any such offence as aforesaid ; such presentment or indictment shall forthwith be returned to the clerk of the council, by the clerk of the crown or clerk of the peace respectively, acting at such assizes or general quarter sessions ; and the person or persons named in such presentments or indictments shall, by proclamation by the lord lieutenant or other chief governor or governors and council of this kingdom, for the time being, be ordered to surrender himself or themselves, and in case such person or persons so presented or indicted and proclaimed, do not, within the time limited by such proclamation, surrender himself or themselves to some one or more of the justices of the peace of the county, county of the city, or town, where such presentment or indictment shall be made, he or they so presented or indicted and proclaimed, shall from thenceforth be deemed convict of felony, and transported as in cases of felony : and the court before whom such person or persons shall be brought, shall have power and authority to order such offenders to be transported for the term of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm ; and all and every person and persons, who shall knowingly conceal, aid, abet, or succour such person and persons so presented or indicted and proclaimed, from and after the time they were so presented or indicted and proclaimed, shall be guilty of felony, and shall be transported for the space of seven years, in like manner as other felons may be transported, by virtue of any law now in being for that purpose.

66. That the printed proclamation, wherein such person and persons are named or mentioned to be presented or indicted by the grand jury of any county, county of any city or town in this kingdom, at the general assizes or quarter sessions, to be guilty of the offences aforesaid, shall be taken, deemed, and adjudged sufficient evidence against such person and persons ; and that the justices of oyer and terminer, and general gaol delivery, the several judges of assize, and justices at sessions, before whom any person or persons convicted of any crime or crimes, for which the person or persons convicted is or are, or shall be liable

ortation, shall and may order that such person or per- 26 G. 3, c. 24.
 ansported, either to any of his majesty's plantations or
 is in America, or to such other place or places not in
 s such judges or justices respectively shall order and
 ny law, statute, or usage to the contrary notwith-

SECTION 6.

Libel.

24 Geo. 3, c. 28, s. 1.—Whereas, the liberty of the
 been grossly abused, and may be very much endan-
 the publication of many traitorous, seditious, false, and
 libels, to the great disturbance of the public peace,
 injury of many private families and individuals ; for
 hereof, be it enacted, &c., that no person whatsoever
 or cause to be printed, publish or cause to be publish-
 newspaper, intelligencer, or occurrences, or any paper
 e purposes of a newspaper, intelligencer, or occurrences,
 she, or they shall have first given in to the commissioners
 ing his majesty's stamp duties, or their proper officers in
 tive towns, and at their respective offices where stamped
 l be distributed, an affidavit setting forth his, her, or
 name and names, and the true name and names of the
 or proprietors of such newspaper, or other paper serving
 es aforesaid, and of all and every person or persons re-
 sharing, or entitled to receive or share the profits thereof,
 with the place or places of abode of every such printer,
 or other person as aforesaid ; which affidavit or affida-
 be signed and sworn by all and every such proprietor
 etors, printers and publishers as aforesaid, and shall be
 with the said commissioners, or their proper officers in
 ective towns, and at their respective offices, where
 aper shall be distributed ; and shall remain with such
 ners or officer as aforesaid, for safe custody, and to be
 as occasion may require, at or before the trial of all
 as, suits, or prosecutions, as shall be had or commenced
 uch newspaper or other paper as aforesaid, or any
 therein contained, and the several persons hereby
 sign and swear such affidavit or affidavits as aforesaid,
 rietors of such newspaper or other paper as aforesaid,
 g or sharing, or entitled to receive or share the profits
 all also set forth therein, that no other person, save the
 persons named therein, is a proprietor of, or has any
 rofit in, or is entitled to any share or profit in such
 or other papers as aforesaid ; which affidavit or affida-
 affidavit or affidavits of the like import, shall be made

No news-
 paper, &c. to
 be printed
 until the
 names and
 abodes of the
 proprietors
 shall be
 given upon
 oath to the
 commission-
 ers or distri-
 butors of
 stamps.

23 & 24 G. 3,
c. 28.



Demanding
or receiving
a reward for
printing a
libel.

(Officer not to
sell stamps
for news-
papers, &c.
until requi-
sites per-
formed.

Notice of
transfer of
property to be
given to
proper officer

Selling un-
stamped
newspapers,
&c., or papers
containing
libels, impri-
sonment on
summary
conviction.

and given in like manner, so often as the property in any such newspaper or other paper as aforesaid shall be altered, transferred, or changed ; and such affidavit shall be received and admitted in all courts of justice, as conclusive evidence of all such matters therein as are hereby required to be therein contained, against all and every the person and persons who shall have signed and sworn the same as aforesaid, upon the trial of any such action, suit, or prosecution as aforesaid.

3. And be it declared and enacted by the authority aforesaid, that if any printer, publisher, or other person shall ask, demand, or receive any money or other reward, for printing or publishing, or for forbearing to print or publish any libel ; every such person so receiving or demanding such money or other reward as aforesaid, and all and every person who shall offer or pay, or promise to pay or secure, directly or indirectly, any money, gratuity, or other reward for printing or publishing any libel, shall, upon conviction by due course of law, be deemed and adjudged guilty of a high misdemeanor.

4. That no officer appointed for distributing stamped vellum, parchment, or paper, in this kingdom, shall sell or deliver any stamped paper for printing any public news, intelligence, or occurrences, to any person, until the requisites herein-before prescribed in that behalf shall have been first performed, upon pain of forfeiting such office as aforesaid ; and that every printer, publisher, or person receiving, or being entitled to receive or share the profits of any such newspaper or other paper, within twenty-four hours as aforesaid, shall, after he, she, or they shall transfer his, her, or their shares or property therein, or any part thereof, give notice in writing under his, her, or their hands respectively, of such transfer, to the commissioners for managing his majesty's stamp duties, or their proper officers in the respective towns, and at the respective offices where such stamps are distributed, under a penalty of two hundred pounds, to be sued for, recovered, and applied in the manner herein-before directed.

5. That in case any person or persons shall sell, hawk, carry about, utter, or expose to sale, any newspaper, or any book, pamphlet, or paper deemed or construed to be a newspaper, within the intent or meaning of any of the acts of parliament relating to the stamp duties now in force, or hereafter to be enacted, not being stamped or marked as in the said acts is or shall be directed and appointed, or shall sell, hawk, carry about, utter, or expose to sale, any handbill, paragraph, advertisement, or other paper containing any libel, unless such handbill, paragraph, advertisement, or other paper, shall have been duly stamped as a newspaper ; it shall and may be lawful, for any justice of the peace to commit every such offender, being thereof convicted before him, by his or her confession, or by the oath of one or more credible witness or witnesses, or upon the view of such justice, to any common gaol within his jurisdiction for any

me not exceeding three months, nor less than one week, unless the person or persons so apprehended, shall discover upon oath the name and place of abode of the printer or printers, by whom the handbill, paragraph, advertisement, or other paper shall have been printed, published, or sold; and it shall and may be lawful for any person to seize, apprehend, and carry before any justice of the peace of the county, city, or place where such offence shall be committed, any such person so offending as aforesaid.

55 Geo. 3, c. 80, s. 10.—That every printer, publisher, and proprietor of any newspaper in Ireland, whether for himself, or in trust for any bankrupt, lunatic, infant, feme covert, or person beyond the seas, or for any number of such persons, shall, before he shall print or publish, or cause to be printed or published, such newspaper, and as often afterwards as the said commissioners of stamps, or any of them, shall, by notice in writing or otherwise, require the same, within ten days after being so required, give in to the said commissioners, at their office in Dublin, or to the proper officers in whose districts such newspaper shall be printed, at their respective offices where stamped paper shall be distributed, such affidavit, and of such import as the said printers, publishers, or proprietors of newspapers are or shall be, by any law or laws, directed to make; which affidavit or affidavits shall remain with such commissioners of stamps or officers, and be produced in manner hereinafter mentioned, as often as occasion may require: and every printer, publisher, or proprietor of any newspaper in Ireland, whether for himself or in trust for any bankrupt, lunatic, or other person or persons, who shall print or publish, or cause to be printed or published, any newspaper, before he shall have given in to the commissioners of stamps such affidavit as aforesaid; or, when required thereto as aforesaid, shall neglect or omit to give in such affidavit, within the time and at the places aforesaid, shall, for every such offence, neglect, or omission, pay a penalty of forty pounds, and shall be disabled from receiving any stamps for printing such newspapers upon, and shall be deemed and taken as if he, she, or they never had been qualified to print or publish any newspaper, until he, she, or they shall make and deliver in such affidavit as aforesaid.

12. That such and every such affidavit shall be produced as occasion may require, at or before the trial of all such actions, suits, prosecutions, informations, or indictments, as shall be had or commenced, filed, or found, touching such newspapers or any publication therein contained; and such affidavit or affidavits shall, on every such trial, be received and admitted against all and every the person and persons who shall have so signed and sworn the same, as conclusive evidence of all such matters herein, as shall be by law required to be therein contained, and also of the continuance of all such matters in the same plight and condition to the time in question, on such trial, unless it shall be proved that, previous to such time, such person or

23 & 24 G. 3.
c. 24.



Affidavit
of proprietor -
ship when to
be delivered -

Penalty.

Affidavit
evidence
against
printer.

35 G. 3, c. 80.

persons became lunatic, or served a notice in writing at the office where such affidavit shall have been sworn, of any of the said matters therein being changed; or unless it shall appear that, previous to such time, a new affidavit of the same or a similar nature respectively, was or were made concerning the said newspaper, in which the person or persons sought to be affected on such trials did not join; and whensoever any such affidavit shall be produced in evidence on any such trial, it shall be sufficient to prove that the name of the person or persons then sought to be charged therewith, is of his, her, or their hand-writing; and it shall not be necessary to produce the person who administered such oath, or to prove the swearing of such affidavit in any other manner.

Copies of newspapers lodged in stamp office to be evidence against proprietors.

13. That every printer, publisher, and proprietor of a newspaper printed or published in the county, or the county of the city of Dublin, which is, or from time to time shall be liable to any stamp duty, shall, on every day of publication thereof, or on such day next following, which shall not be an holiday, between the hours of ten and three on each day, cause to be delivered to the person who shall be duly appointed for that purpose in the stamp office in the city of Dublin, one copy of the newspaper so printed or published, with the name of some printer, publisher, or proprietor thereof, written thereon after the same shall be printed, by his or her own proper hand-writing, in his or her accustomed manner of signing the same; and every printer, publisher, and proprietor of a newspaper, printed or published in any other place in Ireland, shall, on each day of the publication of such newspaper, or on such day next following, which shall not be an holiday, in like manner, between the hours of ten and three of the clock, cause to be delivered to the distributor of stamps in whose district such newspaper shall be printed or published, two copies of every such newspaper so printed or published, with the name of some printer, publisher, or proprietor thereof, written thereon after the same shall be printed, by his or her proper hand, in his or her accustomed manner of signing the same; for which several copies so delivered, the respective printers, publishers, and proprietors thereof, or the person or persons so delivering the same, shall be paid the usual and current prices of such copies; which said several copies so delivered as aforesaid, shall be, and they are hereby declared to be evidence against the several proprietors, publishers, and printers of such newspapers respectively, in all complaints, suits, actions, indictments, informations, prosecutions, and proceedings, to be commenced and carried on, as well touching such newspapers respectively, as every matter and thing therein contained, and touching any other newspaper, and any or every matter or thing therein contained, which shall be of the same title, purport or effect with such impression or copy so delivered as aforesaid, although the same should vary in some instances or particulars, either as to title, purport, or effect; and the printers, publishers,

newspaper or newspapers, who shall neglect or omit to cause to be delivered such copies or copy signed as may, hereinafore directed, shall, for every such omission, a penalty of one hundred pounds.

That no newspaper so delivered shall be deemed a sufficient, so as to protect any such printer, publisher, or proprietor, the said penalty of one hundred pounds, unless the title shall be the same as that for which such person shall be registered at the stamp-office in Dublin, as the publisher, or proprietor thereof; but if any such newspaper, delivered, shall have a title sufficient to denote that newspaper is the same for which such printer, publisher, printer, is so registered, of which the court is in all cases in every such newspaper so delivered as aforesaid at the office in Dublin, as to any distributor, as the case shall be evidence, in all cases, against all and every the publishers, and proprietors so registered, as fully and to all intents and purposes, as if such newspapers, had, bore the same title as that for which such person has been so registered.

And whereas, upon the petition of any printer, publisher, or proprietor of a newspaper not printed in the county or Dublin, may order that the copies shall be delivered to any distributor of stamps, then to the distributor of the district in which the paper is published; and thenceforward, until further order, the newspaper shall be deemed to be published in the district of the distributor.

And whereas doubts may be entertained as to what shall be the day of publication of any such newspaper; be it enacted, that on every day or days of the week, any such newspaper

If there be
variances in
title, printer
not protected.

And such
newspapers
may be evi-
dence against
him.

Days of pub-
lication, how
ascertained.

14 G. 3, c. 69. made or given the commissioners of stamps in Ireland, by any printer, proprietor, or publisher of a newspaper, under the provisions of this act, or of any act or acts in force in Ireland, for securing the liberty of the press, or for amending any such act; every such affidavit shall state, only the matters heretofore required by law to be stated therein, but also on what day or days of the week such newspaper is intended to be published, and from thenceforth, the said day or days shall be deemed the day or days of publication of such newspaper; and every printer, proprietor, and publisher thereof, shall be deemed and taken to have published the same on the said day or days in every succeeding week, until a new affidavit shall be made according to law, differing in that respect, or until notice of a change in that respect shall have been duly served at the stamp-office in Dublin on some registered printer, proprietor, or publisher of such newspaper, or unless it shall be expressly proved that such newspaper was not published on the particular day or days in question.

† Sir.

Title of
paper lodged
at stamp-
office, evi-
dence against
printer.

17. [Printer, publisher, or proprietor of any newspaper shall deliver one copy of each second or varied impression, at the stamp-office in Dublin, or two copies to the distributor of stamps, signed as aforesaid, under pain of forfeiting one hundred pounds, and that each copy of such varied impression shall be deemed unstamped, and subjected to penalties accordingly.]

18. That, upon all trials in any suit, action, indictment, information or prosecution, to be commenced or carried on, touching any newspaper, or any matter or thing therein contained; any newspaper having the same title as that for which any defendant in any such action, indictment, information, or suit, shall be registered at the stamp-office as printer, proprietor, or publisher, having such title as shall be sufficient to denote that such newspaper is the same for which such printer, publisher, or proprietor shall have been so registered, of which the court is to judge, shall be sufficient evidence that such paper was printed and published by such person or persons so registered, unless the defendant in such action, indictment or information, or suit, shall show the contrary, by satisfactory evidence, and that upon such trials, the proof that the defendant or defendants therein did give in, or deliver, in manner aforesaid, a copy of such impression, signed as aforesaid, if in Dublin, to the stamp-office aforesaid, or if in the country, two copies to the distributor of stamps, signed as aforesaid, shall lie upon such defendant or defendants.

Copy so
lodged, evi-
dence against
printer.

19. That if the printer, publisher, or proprietor of any newspaper in Ireland, upon any trial to be commenced or carried on touching such newspaper, or any matter or thing therein contained, shall not admit that any copy of the paper left at the stamp-office in the city of Dublin, or with the distributor of stamps in the country, was printed or published by him or her, then and in such case, any such copy or impression which shall have been left at the stamp-office in the city of Dublin, or with

his hand-writing, and although it shall not appear by
same was so left, unless he or she shall prove that he
or caused to be left, at the time by this act required, a
copy, or two printed copies of the paper published by
him with the officer or person with whom he or she is by
directed to leave the same, with his or her name written
in his or her own hand-writing, in the manner directed

that if any printer or publisher, or proprietor of any
newspaper in Ireland, shall be, by due course of law, outlawed
for a criminal offence, or receive judgment for printing or
publishing a traitorous or seditious libel; the said commissioners
in Ireland, and their officers for distributing stamped
parchment, or paper respectively, are hereby prohibited
to deliver to, or for the use of any such printer, publisher,
editor so outlawed, or who shall have so received judg-
ment for such libel, any stamped paper for printing any newspaper.
And if any printer, publisher, or proprietor of any news-
paper shall be at any time published in Ireland, shall
become a bankrupt, or non compos mentis, or shall be out-
lawed for any crime, or shall receive judgment for printing or
publishing any traitorous or seditious libel; then and in every
such printer or printers, publisher or publishers, pro-
prietors respectively, shall no longer be entitled to
publish such newspaper; but shall, as to any such right,
be barred from thenceforth as if he, she, or they never had
taken any affidavit as aforesaid.

And whereas it may happen that an idiot, a lunatic, an
infant, or feme covert, or the creditors or assignees of a bank-
rupt, may become or be entitled to the profits, or to
a share or proportion of the profits of any newspaper.

Printers out-
lawed, &c.
not to have
stamps for
papers.

Printers
becoming
bankrupt
&c., not enti-
tled to print
newspapers.

55 G. 3, c. 80.

said ; and thereupon such affidavit shall be of the same effect for the printing and publishing of such newspaper, cestui que trust so named was present, and had sworn a vit in the usual form ; and from thenceforth, every suot shall be deemed and taken to be a publisher of such ne and responsible as such, in all respects, and to all the purposes whatsoever : provided nevertheless, that no suc vit shall be deemed sufficient to authorize the publication newspaper, until such trustee, so swearing the same, sh performed all and every requisites and requisite ordained law then in force to be previously performed by all the ers thereof.

No other affidavit in trust received.

23. That no person whatsoever shall in any wise concerned in the printing or publishing of any newspaper receiving the profits, or any share or proportion of the thereof, in trust for any other or others, under any whatsoever ; unless such person shall have previously lodged in the stamp-office, such affidavit as aforesaid ; or usage to the contrary notwithstanding.

Service of process at printing office sufficient.

24. That the leaving or service of any legal process suit, information or indictment, prosecution or proceeding brought, filed, found, instituted, or carried on, against any publisher, or proprietor of any newspaper or pamphlet in for the purpose of recovering any debt or penalty under or any other act from time to time in force in Ireland, in any wise, to the collection or regulation of any stamp duty, or for any matter or thing contained in such newspaper, pamphlet, or in any wise relating thereto, at the printing place where such newspaper or pamphlet respectively then usually printed and published, shall be deemed and ordered, to all intents and purposes, good service of such

New affidavit to be made, on change of place of publication.

25. That any newspaper in Ireland shall be deemed as to be usually printed and published at the place ment that behalf in the last or only affidavit which shall be made by the printers, publishers, and proprietors there deposited in the stamp-office in Dublin according to law that if it shall be at any time intended to change the printing or publishing any such newspaper, a new affidavit thereupon be made, stating such new place of publication stating all other matters required by law to be contained affidavit, as if such newspaper had never before been published.

All copies of the libel, in possession of the person convicted by verdict, may be seized.

60 Geo. 3, and 1 Geo. 4, c. 8, s. 1.—Whereas, it is expedient to make more effectual provision for the punishment of blasphemous and seditious libels ; be it enacted by His Majesty that after the passing of this act, in every case in which a dict or judgment by default shall be had against any person composing, printing, or publishing any blasphemous or seditious libel, tending to bring into hatred or contempt the person of his majesty, his heirs, or successors, or the government and constitution of the United Kingdom

lished, or either house of parliament, or to excite his subjects to attempt the alteration of any matter in state as by law established, otherwise than by lawful means, shall be lawful for the judge or the court, before whom, and in which such verdict shall have been given, or the court in which judgment by default shall be had, to make an order for the seizure and carrying away and detaining in safe custody, in the manner as shall be directed in such order, all copies of the said libel which shall be in the possession of the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use ; and upon oath having been previously given, to the satisfaction of the court or judge, that a copy or copies of the said libel shall be in the possession of such other person, for the use of the person against whom such verdict or judgment shall have been given : and in every such case, it shall be lawful for any justice of the peace, or for any constable, or other peace-officer, acting under any such order, or for any person or persons acting in aid of any such justice of the peace, constable, or peace-officer, to search for any copies of such libel, in any house, building, or other place whatsoever, belonging to the person against whom any such verdict or judgment shall have been given, or to any other person so named, in whose possession any copy of any such libel, belonging to the person against whom such verdict or judgment shall have been had, shall be ; and if such admission shall be refused, or not obtained within a reasonable time after it shall have been first demanded, to enter, by day, into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to keep the same in safe custody, until the same shall be restored according to the provisions of this act, or disposed of according to any order made in relation thereto.

60 G.3 & 1 G.
4, c. 8.



Justices, &c.
may search
for copies of
such libel.

And if, in any such case as aforesaid, judgment shall be entered, or if, after judgment shall have been entered, the same shall be reversed upon any writ of error ; all copies so seized shall forthwith be returned to the person or persons from whom they shall have been so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatever ; and in any case, in which final judgment shall be entered upon the verdict so found against the person or persons charged with composing, printing, or publishing such libel, then all copies of the said libel shall be disposed of, as the court, in which such judgment shall be given, shall order and direct.

How the
copies shall
be disposed
of.

And if any person shall, after the passing of this act, be convicted of having, after the passing of this act, composed, printed, or published any blasphemous libel, or any such libel as aforesaid ; and shall, after being so convicted, be again so convicted a second time, and be thereof legally convicted before the next session of the Court of Oyer and Terminer or gaol delivery, or in the Court of King's Bench ; such person may, on such

Second
offence.

60 G. 3 & 1 G.
4, c. 8.

second conviction, be adjudged, at the discretion of the court, either to suffer such punishment as may now by law be inflicted in cases of high misdemeanors, or to be banished from the United Kingdom, and all other parts of his Majesty's dominions, for such term of years as the court, in which such conviction shall take place, shall order.

Certificate to be given of conviction of former libel.

7. That the clerk of assize, clerk of the peace, or other clerk or officer of the court having the custody of the records where any offender shall have been convicted of having composed, printed, or published any blasphemous or seditious libel, shall, upon request of the prosecutor on his majesty's behalf, make out and give a certificate in writing signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, to the justices of assize, oyer and terminer, great sessions, or gaol delivery, where such offender or offenders shall be indicted for any second offence of composing, printing, or publishing any blasphemous or seditious libel; for which certificate, six shillings and eightpence, and no more, shall be paid; and which certificate shall be sufficient proof of the conviction of such offender.

Enactment as to banishment repealed.

11 Geo. 4, and 1 W. 4, c. 73, s. 1.—[Recites the 60 Geo. 3, and 1 Geo. 4, c. 8, s. 4.] And whereas it is expedient to repeal so much of the said act as relates to the sentence of banishment for the second offence; be it therefore &c., that so much and such parts of the said act as relate to the sentence of banishment for the second offence, be, and the same are hereby wholly repealed.

Recognizance to be of good behaviour, as well as to appear and answer.

60 Geo. 3, and 1 Geo. 4, c. 9, s. 16.—And be it declared and enacted, that it shall be lawful for any of his majesty's courts of record at Westminster or Dublin, or of great sessions in Wales, or any judge thereof respectively, or for any court of quarter or general sessions of the peace, or for any justice of the peace, before whom any person charged with having printed or published any blasphemous, seditious, or malicious libel, shall be brought, for the purpose of giving bail upon such charge, to make it a part of the condition of the recognizance to be entered into by such person, and his or her bail, that the person so charged shall be of good behaviour during the continuance of such recognizance.

Jury may give a general verdict in cases of libel.

33 Geo. 3, c. 43, s. 1.—Whereas doubts have arisen whether, on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the king and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impannelled to try the same, to give their verdict upon the whole matter in issue. Be it therefore declared and enacted by &c., that on every such trial, the jury sworn to try the issue may give a general verdict of guilty or not guilty, upon the whole matter put in issue upon such indictment or information; and shall not be required or directed by the court or judge before whom such

indictment or information shall be tried, to find the defendant ^{33 G. 3, c. 43.} or defendants guilty, merely on the proof of the publication by such defendant or defendants, of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.

2. Provided always, that on every such trial the court or judge, before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury, on the matter in issue between the king and the defendant or defendants, in like manner as in other criminal cases. ^{Judge may give his opinion and directions, as in other criminal cases.}

3. Provided also, that nothing herein contained shall extend, or be construed to extend, to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases. ^{Jury may find a special verdict.}

4. Provided also, that in case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment, on such ground, and in such manner, as by law he or they might have done before the passing of this act, any thing herein contained to the contrary notwithstanding. (a) ^{Defendants found guilty, may move in arrest of judgment.}

(a) The affidavit lodged in the Stamp Office, by the printer or proprietor of a newspaper, pursuant to the act 23 and 24 Geo. 3. c. 28, s. 1, (*ante* p. 191,) is evidence of his being such printer or proprietor, not only at the time of making the affidavit, but subsequently. *Rex v. The Proprietors of the Northern Star.*—*Ir. T.R.* 312.



CHAPTER III.

OFFENCES AGAINST TRADE, REVENUE, AND PUBLIC ESTABLISHMENTS.

SECTION 1.

Offences against Public Trade.

Forestalling
of goods ;
forfeiture of
the goods, or
their value.

25 *Edw. 3. stat. 4, c. 3. Eng.*—Item, It is accorded and established, that the forestallers of wines, and all other victuals, wares, and merchandises, that come to the good towns of England, by land or by water, in damage of our lord the king, and of his people, if they be thereof attainted at the suit of the king, or of the party, before mayor, bailiff, or justices thereto assigned, or elsewhere in the king's court; and if they be attainted at the king's suit by indictment, or in other manner, the things forestalled shall be forfeited to the king, if the buyer thereof hath made gree to the seller. (2) And if he have not made gree of all, but by earnest, the buyer shall incur the forfeiture of as much as the forestalled goods forfeited do amount to, after the value as he bought them, if he have whereof. (3) And if he have not whereof, then he shall have two years' imprisonment and more at the king's will, without being let to mainprise, or delivered in other manner. (4) And if he be attainted at the suit of the party, the party shall have the one half of such things forestalled and forfeit, or the price of the king's gift, and the king the other half.

33 *Hen. 8, c. 2. (a)*—Forasmuch as divers merchants and other persons, coveting and practising greatly their owne singular commodities and profites, and having little or no respect to the wealth of this land, have of late used to goe from towne to towne within this land, being no market townes, to buy hides, fells, checkers, fleges, yarne, linnen cloth, wooll and flocks, whereby the faires and markets within this land be greatly decayed, and the king's custome diminished, and every kinde of merchandise, without cause reasonable, brought to a great dearth, to the great hindrance and losse of the king's majestie, and of his

(a) Entitled, "*An act for gray merchants.*" By section 4, this act was declared to be temporary; but, having expired, was afterwards revived and made perpetual by the 11 *Eliz. c. 5.*

faithful and true subjects of the same land. Wherefore be it **33 H. 8, c. 2.**
 &c., that no person ne persons, to the intent to sell the same
 againe, shall buy ne cause to be bought, within this land, any
 hydes, fells, checkers, fleges, yarne, linnen cloth, wooll, or
 flocke, in any other place or places, but only in the open
 market or fayre : and if that any person or persons doe other-
 wise, and be of the same duely convicted, that then every such
 person so convicted, to be adjudged and deemed a forestaller
 of the king's market.

Hides, &c.
 not to be
 bought, to
 sell again,
 save in open
 market
 Offenders
 punishable
 as forestal-
 lers.

2. Provided alway, and be it enacted by authoritie aforesaid,
 that if any inconvenience, dammage, or hinderance doe, should,
 may grow, or come by any meanes of this present act, that then
 the lord deputie, the lord chauncellour, the lord treasurer, the
 vice-treasurer, the three chiefe judges, and the master of the
 rolls, of this land for the time being, or five of them at the
 least, whereof the lord deputie and lord chauncellour to be two
 of them, examining the circumstance of the same, shall have
 authority and power, by open proclamation to be made in any
 of the said markets or fayres, to discharge, adnihilate, and make
 voyde this present act, or such part thereof as they shall thinke
 good : and this present act, from and after the said proclama-
 tion, so to be had and made, or as much thereof as they shall
 thinke good as aforesaid, shall be cleerly and utterly voyde and
 of none effect.

In case of in-
 convenience,
 the Lord
 Lieutenant
 or Lord
 Chancellor
 may avoid
 this act by
 proclama-
 tion.

3. That the justices of the King's Bench, and every justice
 of peace in open sessions, shall have full power and authoritie,
 by authoritie of this act, to enquire of and upon the offenders,
 and offences against the contents and purport of this said act and
 order, and to heare and determine the same, according to the
 lawes of this land, and to punish the said offenders, and to taxe
 like fines upon the same offenders, as though they were con-
 victed of any forestalling of the king's markets, by the lawes of
 this land.

Offenders,
 how punish-
 able.

5. Provided alway, that this act, ne any thing therein con-
 teyned, shall extend to any tanner or barker within this realm,
 for the buying of any hides to be tanned or barked, so that
 they doe tanne or barke the same.

Act not to
 extend to
 tanners.


6. Provided also, that this act, ne any thing therein con-
 teyned, shall not extend to binde or charge any of the inhabi-
 tants of any county, citie, or borough towne, within this realme
 or land, unto such time as the tenour of this said act be pro-
 claimed in the same county, citie, or borough towne.

This act not
 to bind until
 proclama-
 tion.

8 *Edw. 4, c. 2. (a)*—Whereas, diverse persons, having them-
 selves great abundance of all maner of corn, have used to buy in the
 common market great store of corn to granell up the same to
 sell upon a dearth ; and also divers other persons called badgers,
 have used to goe to one market, and have bought great store of

No person
 shall buy
 corn at mar-
 ket, having
 already a suf-
 ficient store ;
 nor shall

(a) Entitled "*An act against ingrossers and regrators of corn.*"

8 Ed. 4, c. 2.  corn bought at market be sold in the same or other market.

wheat and corne at one price, and shortly after have taken the same corne unto another market, and have there sold at a more deer price by twopence or fourpence in the bushell, which hath been the greatest means of dearth within this land, to the great intolerable hurt of the poor inhabitants of this land of Ireland: Therefore it is ordained and established, by authority of the said parliament, that no man, having sufficient store of corn of his own, shall buy any maner of corne in the common market, nor that no other person or persons called badgers, shall buy any maner of corne in the form aforesaid, upon such payn as is made against the regrators of the king's market; and they, and every one of them, to be judged in the law as common regrators of the market. Also, that it shall not be lawfull to no man, of what condition soever he be, which will buy any maner of corne in the common market, to sell the same againe in the same market, nor in no other market, upon payn to be adjudged in law as a common regrator of the market.

Riotously destroying any place where corn is kept,

or entering such place, or taking or spoiling the corn therein, or entering any ship and taking or injuring the corn therein, or the rigging of such ship,

or obstructing the loading of corn on board any ship, or preventing a ship so laden from sailing,

or stopping any horse or cart laden with corn,

23 & 24 Geo. 3, c. 20, s. 1.—Whereas every attempt to obstruct by violence the freedom of the export of corn, grain, meal, malt, flour, bread, biscuit, and potatoes, or the free passage thereof from one part of the kingdom to another, either by land or by water, is not only a daring violation of law, but must injure agriculture, and be in the end productive of dearth and famine: be it &c., that if any persons unlawfully, riotously, and tumultuously assembled together, shall, at any time after the passing of this act, wilfully and maliciously pull down, demolish, set fire to, or destroy, or shall begin to pull down, demolish, set fire to, or destroy any storehouse, mill, granary, corn-stack, or other place where corn, grain, meal, malt, flour, or potatoes are usually stored or kept for exportation or sale, or shall unlawfully enter or break into, or unlawfully attempt to enter or break into any such storehouse, mill, granary, or other place, or take, carry away, throw abroad, or spoil, or attempt by force to take, carry away, throw abroad, or spoil, any corn, meal, malt, flour, or potatoes, which shall be stored or kept therein, or shall unlawfully enter on board any ship, vessel, or boat, wherein any corn, grain, meal, malt, flour, or potatoes shall be laden, and wilfully take, carry away, cast overboard, destroy, or damage any of the said articles laden therein, or wilfully out, injure, spoil, or take away the said ship, vessel, or boat, or the rigging, furniture, tackle, or rudder thereof, or any part of such ship, vessel, or boat, rigging, furniture, or tackle, or unlawfully, wilfully, and by force obstruct or prevent, or endeavour to obstruct or prevent, the loading or laying any of the said articles on board any ship, vessel, or boat, or shall unlawfully, wilfully, and by force prevent, or endeavour to prevent any ship, vessel, or boat laden therewith, or in which any of said articles shall be laden, from sailing, or shall unlawfully, wilfully, and knowingly, and by force stop, seize, detain, take, or drive away any horse, car, cart, carriage, or boat laden with

any of the said articles, on the way to or from any mill, store, granary, or market, seaport, or place of shipping, with a view or intent to prevent the corn, grain, meal, malt, flour, bread, biscuit, or potatoes therein, or loaden thereon, or any part thereof, from being taken to the house, vessel, storehouse, place, or person to which it was intended to be carried, or shall wilfully kill or maim any horse or horses, or other beast or beasts laden therewith, or shall wilfully and forcibly cut, or otherwise break or destroy any of the sacks, or scatter or throw abroad any of the aforesaid articles, wherewith such car, cart, carriage, horse, or boat is or shall be laden, or take away, or distribute, or compel the owner, driver, or conductor thereof to distribute, sell, or otherwise dispose of any such article wherewith such car, cart, carriage, boat, horse, or other beast is laden, or any part thereof, or shall wilfully destroy any weir, sluice, milldam, drain, or outwork belonging or appertaining to any mill; every such person so offending in any of the said matters, and all persons unlawfully, riotously, or tumultuously assembled, who shall aid or assist in the commitment, or the attempting to commit any of the said offences, being thereof lawfully convicted, shall be adjudged felons, and suffer death as in the case of felony without benefit of clergy(a).

23 & 24 G. 3,
c. 20.

or injuring
the horse,
sacks, &c.,

or taking
away, or
compelling
the owner
to distribute
his corn,
or breaking
any milldam
or sluice,

Felony,
death.

11 *Eliz.*, sess. 3, c. 4 (a).—Forasmuch as great hurt and hindrance doth daily grow, to the queen's majestie's subjects, within this realm, by reason that the inhabitants of diverse cities and townes within this same, adjoyning neere to rivers, that doth ebb and flow, wherein the frye of salmon, ele, and other commodious fishes are bred and nourished, doth keep herds and number of swine, and also doth use, at the ebb or low water, to suffer their said swine to feed upon the strands of the said rivers, where they destroy great quantitie of salmon and ele frye, and frye of spawnne of divers other good fishes; to the great hurt and hindrance of fishing, and to the great hindrance and damage of the commonwealth: be it enacted, that, from the firste day of March to the last day of September yearly, no person nor persons, by himselfe, or by his or their appointment, shall drive or put any swine, hogge, or pigge, upon any strand of any river or rivers within this realm, to be fed or pastured thereupon, in any place where the sea doth ebbe or flow within the said river or rivers, nor in any other place or places where the sea doth usually ebbe and flow; nor that no person or persons doth permit or suffer their said swine

From 1st of
March till
end of Sep-
tember,
swine shall
not be al-
lowed to
feed upon
the sea
shore,

(a) To warrant a conviction under this act, the outrage complained of must have been committed, with a view to the mischief which the preamble recites, it was the object of the act to prevent. *Mitchell v. Blake*, 1 *Hud. and Bro.* 195.

(b) Entitled "*An act for the preservation of salmon frie and ele frie.*"

11 El. sess. 3,

c. 4.

upon pain of
forfeiture.Persons re-
sisting the
seizure of
such swine,
punishable
as for a res-
cuer.

to go or to be set to feed upon anie strand within this realm, as farre as the sea doth use to ebbe and flow; upon paine of forfeiture of the same swine, hogges, or pygges, and every of them, to such person or persons as shall or will seise upon the same hogges, swine, or pygges, or any of them; the one halfe thereof to be alwayes reserved and answered unto the queen's majestie, her heyres and successours, and the other halfe to be to the partie that shall seise on the same. And if any person or persons shall withstand or resist any so seising the said swine, hogges, pygges, or any one of them, that the partie so doing shall be used as a rescouser; and that, upon presentment thereof made in any of the queen's ordinary courts, or at any sessions to be holden within this realm, or in any court of priviledged citie or borough, having jurisdiction to inquire or receive presentments, like processe shall be made upon such presentment, as upon presentment of rescues of distresse for rent at the common law; and the parties thereupon convict shall be committed unto the ordinary gaol of that court, where he is convicted, untill he make fine to the queen, her heyres or successours, for the said rescous, as shall be appointed by the court, where such condemnation is to be had, and untill he or they pay to the queen and seyser of the said hogges, swine, pygges, or any of them, the value and price of the swine so rescoued; the value to be appointed by the judges before whom such matter shall be proponed and adjudged; and such condemnation thereupon to be made or had as aforesaid: saving always to all and singular bodies politique and corporate, and all lords spirituall and temporall, the moietie of the forfeitures, fines, and penalties, to grow by this act for any offence or offences to be committed against the tenour hereof, in as large and ample manner as they have or ought to have other forfeitures, fines, and penalties, by the tenours of their several charters; and the other moietie to be unto the seisor or seisors of such swine, hogges, pygges, or any of them as aforesaid.

Obstructing
or assaulting
officers of
the fisheries
in execution
of their duty,
misdemeanor.

59 Geo. 3, c. 109, s. 64.—That if any officer or officers of the fisheries, or any person or persons, appointed by, or acting under the said commissioners of the fisheries, being on shore, or going on board, or returning from on board, or being on board any vessel or boat engaged in the said fisheries, shall be opposed, obstructed or assaulted, in the due execution of his or their office or duty, any person or persons so opposing, obstructing or assaulting the said officer or officers in the due execution of his or their duty, and all such as shall act in his or their aid or assistance, shall and may be carried and conveyed before one of his majesty's justices of the peace residing near the place where such offence shall be committed, or where such person or persons shall be apprehended; and such justice shall, upon the oath or oaths of one or more credible witness or witnesses, in case he shall not find sufficient bail for his appearance at the next quarter sessions or assizes to be holden for the county in

which the place aforesaid shall be situate, to commit such person to the gaol of such county, there to remain until the next quarter sessions or assizes to be holden for said county, or until such person shall be delivered by due course of law; and in case an indictment shall be found against such person or persons, such person or persons shall forthwith plead thereto, without having time to traverse the same; and if duly convicted thereof, shall be deemed guilty of a misdemeanour and punished accordingly. 59 G.3, c. 100.

2 Geo. 1, c. 16, (a) s. 7.—That from and after the twenty-fourth day of June next, no land-waiter, or other officer of the revenue, intrusted with the loading, or putting on board, any *butter* or tallow, in order to be exported, shall permit or suffer any cask or casks of *butter* or tallow to be shipped or loaden on board any ship, boat, or vessel, in order to be exported, unless the tare of such cask or casks be branded thereon, pursuant to this act; and if any such land-waiter, or other officer of the revenue, shall offend therein, and be thereof lawfully convicted on any indictment in his majesty's court of King's Bench, or at the assizes to be held for the county, city, or town where such offence was committed, such land-waiter, or other officer of the revenue intrusted as aforesaid, shall be incapable of serving his majesty, his heirs and successors, in any place, office, or employment, in the revenue within this kingdom, during the space of three years next after such conviction. Revenue officers permitting tallow to be shipped, unless the tare be branded on the cask, incapacitated for three years.

21 & 22, Geo. 3. c. 9, s. 3.—And whereas it is expedient, by certain provisions, penalties, and forfeitures, to prevent and prohibit the exportation (except to Great Britain) of all such tools or utensils as are commonly used in, or are proper for preparing, working up, or finishing of the cotton or linen manufacture of this kingdom; and also for the preventing and prohibiting all and every person and persons whomsoever, from the collecting and obtaining, or having in his, her, or their possession or custody, with intent to export the same, any tools or implements used, as well in the said cotton or linen, as in the woollen and silk manufactures of this kingdom; be it &c., that if, at any time after the passing of this act, any person or persons shall, upon any pretence whatsoever, load, or put on board, or pack, or cause or procure to be loaden, put on board, or packed in order to be loaded or put on board of any ship or vessel, which shall not be bound directly to some port or place in Great Britain or Ireland, or shall lade, or cause or procure to be laden on board any boat, or other vessel, or shall bring, or cause to be brought to any quay, wharf, or other place, Exporting machinery used in the cotton, linen, silk, or woollen manufacture; forfeiture of the machinery, and £200, with one year's imprisonment.

(a) The provisions of this act, so far as they "relate to butter, or to the casks in which butter is to be packed or made up," have been repealed by the act, 52 Geo. 3, c. 134.

21 & 22 G. 3.
c. 9.

in order to be so loaden or put on board any such ship or vessel, any machine, engine, tool, press, paper, utensil, or implement whatsoever, which now is, or at any time hereafter, shall or may be used in, or be proper for the preparing, working, pressing, finishing, or completing of the woollen, cotton, linen, or silk manufactures of this kingdom, or any or either of them, or any other goods wherein wool, cotton, linen, or silk, or any or either of them, are or is used, or any part or parts of such machine, engine, tool, press, paper, utensils, or implements, by what name or names soever the same shall be called or known, or any model or plan, or models or plans of any such machine, engine, tool, press, paper, utensils, or implement, or any part or parts thereof, and complaint being made upon the oath of one or more credible witness or witnesses, before any justice or justices of the peace, it shall and may be lawful to and for such justice or justices of the peace to issue his or their warrant or warrants, not only to seize all such machines, engines, tools, press, papers, utensils, or implements, and part or parts thereof, and all such model or plan, models or plans, and part or parts thereof, together with the packages, and all other goods packed therewith, if any such there be, but also to bring the person or persons so complained of, before him or them, or some other of his majesty's justices of the peace for the same county, city, or place; and if, when such person or persons shall be brought before such justice or justices, he, she, or they shall not give such an account of the use or purpose to which such machines, engines, tools, press, paper, utensils, or implements, and part or parts thereof, and all such model or plan, models or plans, and part or parts thereof, are intended to be appropriated, as shall be satisfactory to the justice or justices before whom he, she, or they shall be brought as aforesaid, then and in such case it shall and may be lawful to and for such justice or justices, not only to cause all such machines, engines, and other articles which shall have been seized as aforesaid, together with the packages, and all other goods packed therewith, to be detained, but also to bind the person or persons so charged, to appear at the next assizes or quarter sessions of the peace for the county, city, or place where such offence shall be committed, with reasonable sureties for his or their appearance; and in case such person or persons shall refuse or neglect to give such security, then and in such case it shall and may be lawful to and for such justice or justices, to commit the person or persons so refusing, to the common gaol or house of correction, there to be kept until the next assizes or next quarter sessions of the county, city, or place where such commitment shall be, and until he, she, or they shall be delivered by due course of law: and in case any such person or persons shall be convicted of any of the offences aforesaid, upon any indictment or information against him, her, or them, at such

atizes or quarter sessions of the peace as aforesaid, the person 21 & 22 G. 3,
 or persons so offending shall, for every such offence, not only c. 9.
 forfeit all such machines, engines, tools, press, paper, utensils,
 implements, model, or plans, or parts thereof respectively, toge-
 ther with the packages, and all other goods packed therewith,
 if any such there be, but also the sum of two hundred pounds,
 and shall also suffer imprisonment in the common gaol, prison,
 or house of correction of the county, city, or place wherein
 such offender or offenders shall be respectively convicted, for
 the space of twelve months, without bail or mainprize, and
 until such forfeiture shall be paid.

8. That from and after the passing of this act, if any person Having such
machinery
with intent
to export ;
forfeiture of
the machine-
ry, and £200,
with one
year's im-
prisonment.
 or persons shall have in his, her, or their custody, power, or
 possession, or shall collect, obtain, make, apply for, or cause
 or procure to be made, any such machine, engine, tool,
 press, paper, utensil, or implement, or any part or parts thereof,
 or any such model or plan, models or plans, or part or parts
 thereof as aforesaid, with intent to export, or that the same
 may be exported to some other port or place than Great
 Britain, or some port in this kingdom ; and complaint being
 made, upon the oath of one or more credible witness or wit-
 nesses, before any justice or justices of the peace, that there is
 reason to believe such person or persons hath or have in his,
 her, or their custody, power, or possession, or hath or have
 collected, obtained, made, applied for, or caused or procured
 to be made, any such machine, engine, tool, press, paper,
 utensil, or implement, or part or parts thereof, or any such
 model or plan, or models or plans, or part or parts thereof as
 aforesaid, with intent to export, or that the same may be ex-
 ported to some other port or place than Great Britain, or some
 port in this kingdom ; then, and in any of the said cases, it
 shall and may be lawful to and for the said justice or justices
 of the peace to issue his or their warrant or warrants to seize
 all such machines, engines, tools, press, papers, utensils, or
 implements, or part or parts thereof, and all such models or
 plans, or part or parts thereof, as aforesaid, and to bring the
 person or persons so complained of, before him or them, or
 some other of his majesty's justices of the peace for the same
 county, city, or place ; and if such person or persons shall not
 give such an account of the use or purpose to which such
 machines, engines, tools, press, papers, utensils, or implements,
 or part or parts,† models or plans, or part or parts thereof, is, † Sic.
 are, or were intended to be appropriated, as shall be satisfac-
 tory to the justice or justices before whom he, she, or they
 shall be brought as aforesaid ; then, and in such case, it shall
 and may be lawful to and for such justice or justices to cause
 all such machines, engines, tools, press, paper, utensils, or im-
 plements, or part or parts thereof, models or plans, or part or
 parts thereof, *which shall have been so seized as aforesaid, to
 be detained ; and also to bind the person or persons so charged,*

21 & 22 G. 3,
c. 9.

to appear at the next assizes, general gaol delivery, or quarter sessions of the peace for the county, city, or place where such offence shall be committed, with reasonable sureties for his, her, or their appearance; and in case such person or persons shall refuse or neglect to give such security, then, and in such case, it shall and may be lawful to and for such justice or justices to commit such person or persons to the county gaol, prison, or house of correction, there to remain until the next assizes, or quarter sessions of the county, city, or place where such commitment shall be, and until he, she, or they shall be delivered by due course of law; and in case any such person or persons shall be convicted upon any indictment or information against him, her, or them, at such assizes or quarter sessions of the peace as aforesaid, of having in his, her, or their custody, power, or possession, or of having collected, obtained, made, applied for, or caused or procured to be made, any such machine, engine, tool, press, paper, utensil, or implement, or part or parts thereof, model or plan, or part or parts thereof, with such intent as aforesaid, then, and in such case, the person or persons so convicted, shall, for every such offence, forfeit and lose all such machines, engines, tools, press, papers, utensils, or implements, or part or parts thereof, models or plans, or part or parts thereof, which shall be so seized and detained, and also the sum of two hundred pounds, and shall suffer imprisonment in the common gaol of the county, city, or place wherein such offender or offenders respectively shall be convicted, for the space of twelve months, without bail or mainprize, and until such forfeiture shall be paid.

Prosecutions
to be in
twelve
months.

9. Provided nevertheless, that no person shall be prosecuted for any of the offences aforesaid in this clause mentioned, unless prosecution shall be commenced within the space of twelve months next after such offence shall be committed.

Counterfeit-
ing instru-
ments used
in the assay of
gold, or hav-
ing, selling,
or exchang-
ing, or ex-
porting any
manufacture
of metal with
counterfeit
assay stamps,
transporta-
tion, or fine
and impri-
sonment.

23 & 24 Geo. 3. c. 23 (a), s. 28.—That if any person, from and after the said first day of June (1784), shall counterfeit, or cause to be counterfeited, any stamping instrument or punch, used or to be used in pursuance of this act, by any maker or makers of any gold wares, or by any warden or wardens, or deputy warden, or deputy wardens, or assayer or assayers of either of the said assay offices respectively (b), or shall have in his or her possession such counterfeit stamping instrument or punch, knowing the same to be counterfeited, or shall, on any piece or pieces of gold, or of any kind of metal, or of any mixed metals, or of any composition containing any metal or metals of any kinds whatever, counterfeit or imitate, or cause to be counterfeited or imitated, in any way whatever, any mark, stamp, or punch, or

(a) Entitled, "*An act to regulate the assay of gold, and promote the manufacture of gold and silver wares in this kingdom.*"

(b) *Viz. at Dublin, and New Geneva in the county of Waterford.*

any impression of any mark, stamp, or punch, made or to be made in pursuance of this act, by any maker or makers of any gold wares, or by the warden or wardens, or deputy warden or deputy wardens, or assayer or assayers of either of the said assay offices respectively, or shall transpose or remove, or cause to be transposed or removed, from one piece of gold manufacture to another, or from any piece of gold manufacture to any manufacture or manufactures made of any kind of metal, or of any mixed metals, or of any composition containing any metal or metals of any kind whatever, any mark or stamp, or any impression of any mark, stamp, or punch, made or to be made on any manufacture of gold in pursuance of this act, by any maker or makers of gold wares, or by the warden or wardens, or deputy warden or deputy wardens, or assayer or assayers of either of the said assay offices respectively; or shall have in his or her possession, shall sell or expose to sale, shall exchange or expose to be exchanged, shall export, or shall put, or cause to be put on board any ship or vessel, with intent to export out of this kingdom, any manufacture made of gold, or of any kind of metal, or of any mixed metals, or of any composition containing any metal or metals of any kind whatever, upon which such counterfeited or imitated mark, stamp, or impression shall have been made as aforesaid, or to which such real mark, stamp, or impression shall have been transposed or removed as aforesaid, knowing such mark, stamp, or impression to have been counterfeited or imitated as aforesaid, or such real mark, stamp, or impression to have been transposed or removed as aforesaid; every such person being lawfully convicted of such offence or offences respectively, shall be transported to some of his majesty's colonies, plantations, or settlements in Asia, Africa, or America, for seven years, or fined in such sum, and confined for such time, as shall seem meet to the judge before whom such person shall be convicted.

23 & 24 G. 3,
c. 23.

29.—That no finer, refiner, or parter of gold, shall sell or expose to sale, shall exchange or expose to be exchanged, any gold, other than and except fine gold, and without any mixture of alloy, or gold less than fine by one grain in the ounce only, upon pain of forfeiting such gold, or the value thereof.

Refiners shall only sell fine gold, or that which is less than fine by one grain in the ounce.

6 Geo. 4, c. 42 (a), s. 2. [*Recites the 1 & 2 Geo. 4, c. 72; and enacts that it shall be lawful for any number of persons in copartnership, exceeding six, and not having any establishment or place of business within fifty miles of Dublin, to carry on the trade of banking, as partnerships of six had previously done; and to take up money on their bills or notes payable on demand, or at any time after date or sight; and to issue such notes at any place exceeding fifty miles from Dublin; all the*

(a) Entitled, "*An act for the better regulation of copartnerships of certain bankers in Ireland.*"

6 G. 4, c. 42, individuals composing the partnership being liable for the payment of such bills and notes ; the 21 & 22 Geo. 3, (by which the Bank of Ireland was established,) or the 1 & 2 Geo. 4, c. 72, notwithstanding.]

6. [Before the 25th of March in each year, the secretary or other officer shall make out an account (signed by himself, and verified on oath before a justice,) and deliver the same at the stamp office in Dublin ; in which shall be set out,—the name of the firm, the name and residence of every partner as they appear on the books, the name of every bank established by the copartnership, and the names of two or more partners resident in Ireland, (each of whom shall be considered a public officer of the society,) and their titles of office ; in the name of any one of whom the society shall sue and be sued ; and also the name of every town where bills or notes are issued.]

[Upon receipt of the above account, the stamp office shall deliver one stamped certificate in respect of each banking establishment, stating the name of the copartnership, of all the places of business, and of the public officers ; which certificate shall be dated on the day it is granted, and shall be in force until the 25th of March following : it shall also be evidence of the appointment of such public officers.]

9 Geo. 4, c. 80, s. 16. [But if the banking establishments exceed four in number, only four certificates need be granted, viz. three distinct certificates for any three establishments, and one for all the rest.] By this act also, provision is made for allowing licensed bankers to issue notes on unstamped paper. Copartnerships desirous of doing so, shall exchange their certificates for licenses, and enter into certain bonds.

11 Geo. 4, & 1 Will. 4, c. 32, s. 6. [The names of new or additional public officers or banking establishments shall be delivered in to the stamp office, and additional certificates obtained, which shall continue in force until the 25th of March following, and shall be sufficient evidence of the appointment and authority of the public officers.]

Certified
copies of the
returns shall
be evidence
of the ap-
pointment
of public
officers.

7. That a copy of any such account or return so filed or kept and registered at the stamp office, as by the said recited act of the sixth year of the reign of his present majesty and by this act is directed, and which copy shall be certified to be a true copy, under the hand or hands of one or more of the commissioners of stamps, or other officer or officers of the stamp office in London or Dublin for the time being, upon proof made that such certificate has been signed with the hand-writing of the person or persons making the same, and whom it shall not be necessary to prove to be a commissioner or commissioners, officer or officers, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members

society or copartnership, were members thereof at the such account or return. 11 G. 4, & 1 W. 4, c. 32.

That the said commissioners of stamps or other officers of any office for the time being, shall, and they are hereby required, upon application made to them by any person or persons, requiring a copy, certified according to this act, of any account or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to any person or persons so applying for the same, such certified copy, she, or they paying for the same the sum of ten shillings and no more.

11 G. 4, c. 42, s. 10, (*pars*,)—That all indictments, informations and prosecutions, by or on behalf of such society or copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such society or copartnership, or for any fraud, felony, crime or offence, committed against, or with intent to defraud such society or copartnership, shall and lawfully may be had, preferred, and carried on in the name of any one of the public officers, nominated as aforesaid for the time being of such society or copartnership; and that in all indictments and informations, to be had or preferred by or on behalf of such society or copartnership, against any person or persons, whether member or members of such society or copartnership, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such society or copartnership, to be the money, goods, effects, bills, notes, securities, or other property of any one of the public officers, nominated as aforesaid for the time being, of such society or copartnership; and that any forgery, fraud, crime, or other offence committed against, or with intent to injure or defraud such society or copartnership, shall and lawfully may, in such indictments, notwithstanding as aforesaid, be laid or have been committed against, or with intent to injure and defraud any one of the public officers, nominated as aforesaid for the time being, of such society or copartnership, and any person or offenders may thereupon be lawfully convicted for such forgery, fraud, crime or offence; and that in all other actions, indictments, informations, or other proceedings, of whatsoever nature, in which it otherwise might or would have been necessary to state the names of the persons composing such society or copartnership, it shall and may be lawful and sufficient to state the name of any one of the public officers, nominated as aforesaid for the time being, of such society or copartnership; and the death, resignation, removal, or any act of such public officer shall not abate or prejudice any such action, suit, information, prosecution, or other proceeding commenced against, or by, or on behalf of such society or copartnership, and the same may be continued, prosecuted, and carried

Commissioners of stamps &c. shall supply certified copies of returns.

Indictments &c. shall be prosecuted in name of one of the public officers.

§ G. 4, c. 42.

Members may be indicted for frauds, &c. on copartnership.

Act to extend to existing partners for the time being.

Embezzlement by clerks &c., felony.
† *Sic.*

on in the name of ~~any~~ other of the public officers of such society or copartnership for the time being.

20. That if any person or persons being a member or members of any copartnership of bankers in Ireland, shall steal or embezzle any money, goods, effects, bills, notes, securities, or other property, of or belonging to such society or copartnership, or shall commit any fraud, forgery, crime or offence against, or with intent to injure or defraud such society or copartnership, such member or members shall be liable to indictment, information, prosecution, or other proceeding, in the name of any one of the public officers nominated for the time being, of such society or copartnership, for every such fraud, forgery, crime or offence, and may thereupon be lawfully convicted, as if such person or persons had not been, or was or were not a member or members of such society or copartnership; any law, usage, or custom to the contrary notwithstanding.

21. That this act, and the powers and provisions herein contained shall extend, and be at all times construed to extend to any society or copartnership for banking in Ireland, consisting of more than six persons in number, and to the members thereof for the time being, during the continuance of such society or copartnership, whether the same do or shall consist of all or some only of the persons who originally were, or, at the time of the passing of this act, may have subscribed to, or may be members of any such society or copartnership, or of all or some only of those persons together with some other persons, or entirely of some other persons, all of whom became or may become members of such society or copartnership, at any time after the original institution thereof, or subsequent to the passing of this act.

23. That if any cashier or clerk of any banker or bankers, or of any society or copartnership, or† bankers, or of any merchant or merchants, or of any officer or officers entrusted with the receipt or custody of public money in Ireland, shall, without the consent of such banker or bankers, or society or copartnership, or merchant or merchants, or officer or officers, embezzle or take away money, cash, notes, or securities for money to the value of fifty pounds sterling, belonging to such banker or bankers, or society or copartnership, or merchant or merchants, or entrusted to the care of such officer or officers, with an intent to defraud such banker or bankers, or society or copartnership, or merchant or merchants, or officer or officers, such cashier or clerk shall, upon conviction thereof, be adjudged to be guilty of felony, and shall be transported for life or for any term of years, as the court before whom such offender shall be convicted shall think fit to order and adjudge: and every person who shall receive such money, notes, or securities for money, from such cashier or clerk, knowing them to be so taken away with intent to defraud such banker or bankers, or society or copartnership, or merchant or merchants, or officer or officers, shall be likewise adjudged to be guilty of

felony, and shall be transported for life or for any term of years, 6 G. 4, c. 42. as the court before whom such offender shall be convicted shall think fit to order and adjudge.

SECTION 2.

Smuggling and other Offences against the Customs.

3 & 4 Will. 4, c. 51 (a), s. 27.—That if any person or persons shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in forging or counterfeiting the name or handwriting of any receiver-general of the customs, or of any controller-general of the customs, or of any person acting for them respectively as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money in the hands or custody of the governor and company of the bank of England, on account of the receiver-general of the customs; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any draft, instrument, or writing in form of a draft made by such receiver-general or person as aforesaid; or shall utter or publish any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whomsoever; every such person or persons so offending, being thereof lawfully convicted, shall be and is and are hereby declared and adjudged to be guilty of felony, and shall be transported beyond the seas for life.

Forging any draft, &c. on receiver general of customs; felony, transportation.

29. That upon examinations and inquiries made by any surveyor-general of the customs, or any inspector-general of the customs, for ascertaining the truth of facts relative to the customs, or the conduct of officers or persons employed therein, and upon the like examinations and inquiries made by the collector and controller of any outport in the united kingdom, or of any port in the Isle of Man, or made by any person or persons in any of the British possessions abroad appointed by the commissioners of his majesty's customs to make such examinations and inquiries, any person examined before him or them as a witness shall deliver his testimony on oath, to be administered by such of the surveyors-general, or such of the inspectors-general, or such collector and controller, or such person or persons as shall examine him, and who are hereby authorized to administer such oath; and if such person shall be convicted of making a false oath touching any of the facts so testified on oath, or of giving false evidence on his examination on oath, before any of the surveyors-general or inspectors-general of the customs, or such

By whom witnesses may be examined on oath.

False swearing, perjury.

(a) Entitled "*An act for the management of the customs.*"

3 & 4 W. 4.
c. 51.

4. collector and controller, or such person or persons, in conformity to the directions of this act, every such person so convicted as aforesaid shall be deemed guilty of perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

Goods seized
by police
officer, to be
taken to next
customhouse
warehouse, —

3 & 4 Will. 4, c. 53 (a), s. 41.—That if any goods subject or liable to forfeiture, under this or any other act relating to the customs, shall be stopped or taken by any police officer, or other person acting by virtue of any act of parliament, or otherwise duly authorised; such goods shall be carried to the custom-house warehouse next to the place where the goods were stopped or taken, and there delivered to the proper officer appointed to receive the same, within forty-eight hours after the said goods were stopped and taken.

Goods stop-
ped on suspi-
cion of felony
may be de-
tained till
trial.

42. That if any such goods shall be stopped or taken by such police-officer, on suspicion that the same have been feloniously stolen, it shall be lawful for the said officer to carry the same to the police-office to which the offender is taken, there to remain until and in order to be produced at the trial of the said offender; and in such case, the officer is required to give notice in writing to the commissioners of his majesty's customs, of his having so detained the said goods, with the particulars of the same; and, immediately after the trial, all such goods are to be conveyed and deposited in the custom-house warehouse as aforesaid, to be proceeded against according to law; and in case any police officer, making detention of any such goods, shall neglect to convey the same to such warehouse, or to give the notice of having stopped the same, as before described, such officer shall forfeit the sum of twenty pounds.

Making sig-
nals to smug-
gling vessels,
misdemea-
nor.

53. That no person shall, after sunset and before sunrise between the twenty-first day of September and the first day of April, or after the hour of eight in the evening and before the hour of six in the morning at any other time in the year, make, aid, or assist in making any signal, in or on board or from any vessel or boat, or on or from any part of the coast or shore of the united kingdom, or within six miles of any part of such coasts or shores, for the purpose of giving any notice to any person on board any smuggling vessel or boat, whether any person so on board of such vessel or boat be or be not within distance to notice any such signal; and if any person, contrary to the true intent and meaning of this act, make or cause to be made, or aid or assist in making any such signal, such persons so offending shall be guilty of a misdemeanor; and it shall be lawful for any person to stop, arrest, and detain the person or persons who shall so offend, and to carry and convey such person or persons so offending, before any one or more of his majesty's justices of

the peace residing near the place where such offence shall be committed, who, if he sees cause, shall commit the offender to the next county gaol, there to remain until the next court of oyer or terminer, great session, or gaol delivery, or until such person or persons shall be delivered by due course of law; and it shall not be necessary to prove, on any indictment or information, that any vessel or boat was actually on the coast; and the offender or offenders, being duly convicted thereof, shall, by order of the court before whom such offender or offenders shall be convicted, either forfeit and pay the penalty or forfeiture of one hundred pounds, or, at the discretion of such court, be sentenced or committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding one year.

3 & 4 W. 4,
c. 53.

† Sic.

54. Provided always, and be it &c., that in case any person be charged with, or indicted for having made, or caused to be made, or being aiding or assisting in making any such signal as aforesaid, the burthen of proof that such signal, so charged as having been made with intent and for the purpose of giving such notice as aforesaid, was not made with such intent and for such purpose, shall be upon the defendant against whom such charge is made, or such indictment is found.

Proof that the signal was not so intended, shall lie on the defendant.

55. That it shall be lawful for any person whatsoever to prevent any signal being made as aforesaid, and to enter and go into and upon any lands for that purpose, without being liable or subject to any indictment, suit, or action for the same.

Any person may enter lands to prevent signals.

58. That if any persons, to the number of three or more, armed with fire-arms or other offensive weapons, shall, within the united kingdom, or within the limits of any port, harbour, or creek thereof, be assembled in order to be aiding and assisting in the illegal landing, running, or carrying away of any prohibited goods, or any goods liable to any duties which have not been paid or secured, or in rescuing or taking away any such goods as aforesaid, after seizure, from the officer of the customs or other officer authorized to seize the same, or from any person or persons employed by them or assisting them, or from the place where the same shall have been lodged by them, or in rescuing any person who shall have been apprehended for any of the offences made felony by this or any act relating to the customs, or in the preventing the apprehension of any person who shall have been guilty of such offence; or in case any persons, to the number of three or more, so armed as aforesaid, shall, within the united kingdom, or within the limits of any port, harbour, or creek thereof, be so aiding or assisting; every person so offending, and every person aiding, abetting, or assisting therein, shall, being thereof convicted, be adjudged guilty of felony, and suffer death as a felon.

Three or more armed persons landing or rescuing smuggled goods, felony, death.

59. That if any person shall maliciously shoot at any vessel or boat belonging to his majesty's navy, or in the service of the revenue, within one hundred leagues of any part of the

Shooting at any vessel or officer engaged in

3 & 4 W. 4,
c. 53.

the preven-
tion of
smuggling,
felony,
death.

Being found
with four
others,
having
prohibited
goods,
or with one
other, having
arms or dis-
guised, felo-
ny.

Assaulting
or resisting
officers en-
gaged in the
prevention
of smug-
gling, trans-
portation.

Offences
committed at
sea, deemed
to have been
committed at
the place
where the
offender is
brought or
found.

coast of the united kingdom, or shall maliciously shoot at, maim, or dangerously wound any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his office or duty; every person so offending, and every person aiding, abetting, or assisting therein, shall, being lawfully convicted, be adjudged guilty of felony, and suffer death as a felon.

60. That if any person, being in company with more than four other persons, be found with any goods liable to forfeiture under this or any other act relating to the revenue of customs or excise, or in company with one other person, within five miles of the sea coast or of any navigable river leading therefrom, with such goods, and carrying offensive arms or weapons, or disguised in any way; every such person shall be adjudged guilty of felony, and shall, on conviction of such offence, be transported as a felon, for the space of seven years.

61. That if any person shall, by force or violence, assault, resist, oppose, molest, hinder, or obstruct any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his or their office or duty; such person, being thereof convicted, shall be transported for seven years, or sentenced to be imprisoned in any house of correction or common gaol, and kept to hard labour, for any term not exceeding three years, at the discretion of the court before whom the offender shall be tried and convicted as aforesaid.

77. That in case any offence shall be committed upon the high seas against this or any other act relating to the customs, or any penalty or forfeiture shall be incurred upon the high seas for any breach of such act, such offence shall, for the purpose of prosecution, be deemed and taken to have been committed, and such penalties and forfeitures to have been incurred, at the place on land, in the united kingdom or the Isle of Man, into which the person committing such offence or incurring such penalty or forfeiture shall be taken, brought, or carried, or in which such person shall be found; and in case such place on land is situated within any city, borough, liberty, division, franchise, or town corporate, as well any justice of the peace for such city, borough, liberty, division, franchise, or town corporate, as any justice of the peace of the county within which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction to hear and determine all cases of offences against such act so committed upon the high seas, any charter or act of parliament to the contrary notwithstanding. Provided always, that where any offence shall be committed in any place upon the water, not being within any

county of the united kingdom, or where any doubt exists as to the same being within any county, such offence shall, for the purposes of this act, be deemed and taken to be an offence committed upon the high seas.

3 & 4 W. 4,
c. 53.



103. That whenever any person shall be charged with any offence against this or any act relating to the customs, or for which he or she may be prosecuted by indictment or information in his majesty's court of King's Bench, and the same shall be made appear to any judge of the same court, by affidavit or by certificate of an information or indictment being filed against such person in the said court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended, and brought before him or some other judge of the same court, or before some one of his majesty's justices of the peace, in order to his or her being bound to the king's majesty, with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively, to commit such person to the common gaol of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the court in term time, or of one of the judges of the said court in vacation; and the recognizance to be thereupon taken shall be returned and filed in the said court, and shall continue in force until such person shall have been acquitted of such offence, or, in case of conviction, shall have received judgment for the same, unless sooner ordered by the court to be discharged; and that where any person, either by virtue of such warrant of commitment aforesaid, or by virtue of any writ of *capias ad respondendum* issued out of the said court, is now detained, or shall hereafter be committed to and detained in any gaol, for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information as aforesaid, cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, an appearance and the plea of not guilty will be entered thereto, in the name of such person; and in case he or she shall thereupon, for the space of eight days after the delivery of a copy of such indictment or information as aforesaid, neglect to cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or in-

Judges of
K. B. may
issue war-
rants to ap-
prehend of-
fenders;

who, on re-
fusing to
give bail for
their appear-
ance, shall be
committed.

A copy of the
indictment or
information
may be
served upon
the offender
in custody, or
the gaoler.

If the offen-
der do not, in
eight days,
appear and
plead, an
appearance
and plea may

3 & 4 W. 4,
c. 53.

be entered
for him.

formation, it shall be lawful for the prosecutor of such indictment or information, upon affidavit being made and filed in the court of the delivery of a copy of such indictment or information, with such notice indorsed thereon as aforesaid, to such person, or to such gaoler, keeper, turnkey, as the case may be, which affidavit may be made before any judge or commissioner of the said court authorised to take affidavits in the said court, to cause an appearance and the plea of not guilty to be entered in the said court to such indictment or information, for such person; and such proceedings shall be had thereupon, as if the defendant in such indictment or information appeared and pleaded not guilty, according to the usual course of the said court; and that if, upon trial of such indictment or information, any defendant, so committed and detained as aforesaid, shall be acquitted of all the offences therein charged upon him or her, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the said court of King's Bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly.

A copy of the indictment or information may be left at the house of a person out on bail, or at the residence of his attorney.

109. That where any person shall be arrested by virtue of a warrant issued as aforesaid, and shall enter into a recognizance, and appear in the said court at the return of the said recognizance, but shall not afterwards plead to the information or indictment, it shall and may be lawful for the prosecutor of such information or indictment to cause a copy thereof to be delivered to such person, or to his or her attorney or agent, or to be left at his or her last place of abode, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the information or indictment as aforesaid, cause a plea to be entered in the said court to such information or indictment, that the prosecutor of such information or indictment will enter a plea of not guilty on his or her behalf: and that, upon affidavit being made and filed in the court of the delivery of a copy of such information or indictment, with such notice indorsed thereon as aforesaid, to such person, or to his or her attorney or agent, or at his or her last place of abode, as the case may be, it shall be lawful for the prosecutor of such information or indictment to cause the plea of not guilty to be entered in the said court to such information or indictment for such person, and such proceedings shall be had thereupon, as if the defendant in such information or indictment had pleaded according to the usual course of the said court.

Upon affidavit of such service and non-appearance, an appearance and plea may be entered.

Indictments (except in cases before justices) to be preferred by order of the commissioners.

112. That no indictment shall be preferred, or suit commenced, for the recovery of any penalty or forfeiture under this or any other act relating to the customs or excise, (except in the cases of persons detained and carried before one or more justices, in pursuance of this act,) unless such suit shall be commenced in the name of his majesty's attorney-general, or in the name of the lord advocate of Scotland, or unless such indictment

shall be preferred under the direction of the commissioners of his majesty's customs or excise, or unless such suit shall be commenced in the name of some officer of customs or excise, under the direction of the said commissioners respectively.

3 & 4 W. 4,
c. 53.

113. That if any prosecution whatever shall be commenced for the recovery of any fine, penalty, or forfeiture, incurred under this or any other act relating to the customs or excise, it shall be lawful for his majesty's attorney-general, or for the lord advocate of Scotland, if he is satisfied that such fine, penalty, or forfeiture was incurred without any intention of fraud, or that it is inexpedient to proceed in the said prosecution, to stop all further proceedings, by entering a noli prosequi, or otherwise, on such information, as well with respect to the share of such fine, penalty, or forfeiture to which any officer or officers may be entitled, as to the king's share thereof.

Attorney-General may enter a noli prosequi.

116. That in case of any information or proceedings had under this or any other act relating to the customs, the averment that the commissioners of his majesty's customs or excise have directed or elected such information or proceedings to be instituted, or that any vessel is foreign, or belonging wholly or in part to his majesty's subjects, or that any person detained or found on board any vessel or boat liable to seizure is or is not a subject of his majesty, or that any person detained is or is not a seafaring man, or fit and able to serve his majesty in his naval service, or that any person is an officer of the customs, and where the offence is committed in any port in the united kingdom, the naming of such port in any information or proceedings, shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary.

Certain averments to be sufficient, unless the contrary proved.

117. That all persons employed for the prevention of smuggling under the direction of the commissioners of his majesty's customs, or of any officer or officers in the service of the customs, shall be deemed and taken to be duly employed for the prevention of smuggling; and the averment in any information or suit, that such party was so duly employed, shall be sufficient proof thereof, unless the defendant in such information or suit shall prove to the contrary.

Persons employed in the prevention of smuggling to be deemed duly employed.

118. That if upon any trial a question shall arise whether any person is an officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or an officer of customs or excise, evidence of his having acted as such shall be deemed sufficient, and such person shall not be required to produce his commission or deputation, unless sufficient proof shall be given to the contrary; and every such officer, and any person acting in his aid or assistance, shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty as aforesaid, notwithstanding such officer or other person may be entitled to the whole or any part of such seizure or penalty, or to any reward

Officer not required to produce his commission, and declared a competent witness.

3 & 4 W. 4,
c. 53

Limitation
of prosecu-
tions.

Indictments
or informa-
tions may be
tried in any
county.

Damages
occasioned
by miscon-
duct of offi-
cers shall be
made good to
the owners ;
and officers
guilty of mis-
demeanor.

upon the conviction of the party charged in such suit or information.

120. That all suits, indictments, or informations exhibited for any offence against this or any other act relating to the customs, in any of his majesty's courts of record at Westminster, or in Dublin, or in Edinburgh, or in the royal courts of Guernsey, Jersey, Alderney, Sark, or Man, shall and may be had, brought, sued, or exhibited within three years next after the date of the offence committed, and shall and may be exhibited before any one or more justices of the peace within six months next after the date of the offence committed.

122. That any indictment or information for any offence against this or any other act relating to the customs shall and may be inquired of, examined, tried, and determined in any county of England, where the offence is committed in England, and in any county in Scotland, where the offence is committed in Scotland, and in any county in Ireland, where the offence is committed in Ireland, in such manner and form as if the offence had been committed in the said county where the said indictment or information shall be tried.

3 & 4 Will. 4, c. 57 (a), s. 41.—That in case it shall at any time happen that any embezzlement, waste, spoil or destruction shall be made of or in any goods or merchandize which shall be warehoused in warehouses under the authority of this act, by or through any wilful misconduct of any officer or officers of customs or excise, such officer or officers shall be deemed guilty of a misdemeanor, and shall, upon conviction, suffer such punishment as may be inflicted by law in cases of misdemeanor; and if such officer shall be so prosecuted to conviction by the importer, consignee, or proprietor of the goods or merchandize so embezzled, wasted, spoiled, or destroyed, then and in such case no duty of customs or excise shall be payable for or in respect of such goods or merchandize so embezzled, wasted, spoiled, or destroyed, and no forfeiture or seizure shall take place of any goods and merchandize so warehoused in respect of any deficiency caused by such embezzlement, waste, spoil, or destruction, and the damage occasioned by such embezzlement, waste, spoil, or destruction of such goods or merchandize shall be repaid and made good to such importer, consignee, or proprietor, by the commissioners of customs or excise, under such orders, regulations, and directions as shall be for that purpose made and given by the commissioners of his majesty's treasury, or any three of them.

(a) Entitled, "*An act for the warehousing of goods.*"

SECTION 3.

Offences relating to the Excise.

46 Geo. 3, c. 106 (a), s. 51—That if any collector, or any clerk of any collector, or other person or persons, shall wilfully destroy, or cause to be destroyed, or shall wilfully obliterate or deface, or cause to be obliterated or defaced, any of the books of account appertaining to his majesty's revenue, or belonging to the office of any collector of *customs or excise*; or if any such collector, clerk, or other person, shall wilfully take away or secrete any such book, or shall not, within twenty-one days after demand made by any person authorized by *the said commissioners of customs and port duties, or by the said commissioners of inland excise and taxes respectively*, or any one of them, by writing under his or their hands and seals, deliver to such person so authorized all such books as shall be in his, her, or their custody, power, or possession, and certify upon oath, if required, that he, she, or they has or have no other such book appertaining to his majesty's revenue which have been secreted; every such collector, clerk, or other person so offending, shall, upon conviction thereof upon indictment or information, be deemed guilty of a misdemeanor, and shall suffer such punishment as the court before whom such person shall be tried, shall in their discretion think fit, and such person shall be, and is, and are hereby declared to be incapable of serving his majesty in any office or employment, civil or military, or in his majesty's revenue.

Collectors,
&c. of Excise
refusing to
deliver up
books of ac-
count, mis-
demeanor.

52. That in case such collector, clerk, or other person, shall abscond or conceal himself, so that a personal demand cannot be made for any such books of account, a notice or demand in writing for such books shall be affixed on the principal door of the office of the collector to whose office such books belonged, and shall be published in the Dublin Gazette for the space of three calendar months, and such notice or demand, so affixed and published, shall be deemed and taken to be as effectual in law, to all intents, constructions, and purposes, as if a personal demand for such books had been made on such collector, clerk, or other person; and such collector, clerk, or other person may be proceeded against accordingly.

How notice
shall be
given, if the
collector
&c. abscond.

(a) Entitled, "*An act to provide for the better execution of the several acts relating to the revenues, matters, and things, under the management of the commissioners of customs and port duties, and of the commissioners of inland excise and taxes in Ireland.*" By the act 6 Geo. 4, c. 105, s. 412, so much of this act as relates to the revenues of customs, has been repealed.

46 G. 3, c. 106.

Obstructing
excise offi-
cers, misde-
meanor.

60. That if any officer or officers of his majesty's navy, or officer or officers appointed by, or acting under *the said commissioners of customs and port duties*, or the said commissioners of inland excise and taxes, or *either of them*, being on, or going on board, or returning from on board, or being on any ship, boat, or vessel, within the limits of any port, or creek of Ireland, or within eight leagues from the coast of Ireland, shall be opposed, obstructed, or assaulted, in execution of his or their office or duty, by any person or persons, either by day or by night; every such person or persons so opposing, obstructing, or assaulting the said officer or officers, or the due execution of his or their duty, and all such as shall be in his or their aid or assistance, shall and may be carried before any one of his majesty's justices of the peace residing near to the place where such offence shall be committed, or where such person or persons shall be apprehended, and the justices shall, upon the oath of one or more credible witnesses, commit such person to the next county gaol, and there remain until the next court of oyer and terminer, or assizes, or until such person shall be delivered by due course of law; and in case an indictment shall be found against any person or persons, such person or persons shall forthwith be taken thereto, without having time to traverse the same; and if convicted thereof, shall be deemed guilty of a misdemeanor, and shall suffer such punishment as shall be awarded by the court before whom such offender shall be convicted.

Officers
specially
appointed
shall be
deemed the
proper offi-
cers.

61. That whenever it shall happen that any person appointed or directed *by the said commissioners of customs and port duties*, or by the said commissioners of inland excise and taxes *respectively*, to do, perform, or execute any business or duty, in matters relating to the revenues, matters, and business, under the management of *the said commissioners of customs and port duties*, or of the said commissioners of inland excise and taxes *respectively*, the person so appointed or directed shall, in all intents and purposes, be held and considered to be the proper officer for the purposes for which he was so appointed or directed; and that in any matter or suit relating to the business or duty so performed by the person so appointed or directed, all the books and papers of such person so appointed or directed shall, to all intents and purposes, be deemed and taken to be, and shall be admitted in evidence, as the books and papers of the proper officer.

Shooting at
revenue offi-
cers, felony,
death.

62. That if any person or persons upon the shore, or on any ship, vessel, or boat, shall maliciously shoot at or kill any person or persons on board any ship, vessel, or boat belonging to his majesty's navy, or in the service of *the said commissioners of customs and port duties*, or of the said commissioners of inland excise and taxes, within the limits of any port, harbour, or creek of Ireland, or within eight leagues from any part of the coast of Ireland; every such person or persons, being on shore, or on board any ship,

or boat, shall maliciously shoot at, maim, or wound any officer or officers of his majesty's navy, or any officer or officers appointed by, or acting under *the said commissioners of customs and port duties*, or the said commissioners of inland excise and taxes, whether attempting to go on board, or being on board, or returning from on board any ship, vessel, or boat, or otherwise acting in the due execution of his or their duty on shore, or within the limits of any port, harbour, or creek of Ireland, or within eight leagues from any part of the coast of Ireland; or shall maliciously shoot at, maim, or wound any person or persons aiding or assisting such officer or officers in the execution of his or their duty as aforesaid; then every person so offending, and all and every person being aiding, abetting, or assisting therein, shall, being thereof legally convicted, be adjudged guilty of felony, and shall suffer death without benefit of clergy. 46 G. 3, c. 106.

63. That if any person or persons shall be charged with being guilty of any of the offences made felony by this act, before any one or more of his majesty's justices of the peace, or before one of his majesty's justices of the court of King's Bench in Ireland, if the offence be committed in Ireland, or within the limits of any of the ports thereof, or within eight leagues of the coast thereof, by information of one or more credible person or persons upon oath by him or them to be subscribed, and shall be indicted for the same in the county where the offence shall have been committed, if committed within the body of any county, or in any county in Ireland, if the offence shall have been committed at sea, and within eight leagues of the coast thereof, the clerk of the crown where such indictment shall be found, shall return such indictment and information to the clerk of his majesty's most honourable privy council in Ireland, or his deputy or deputies, who is and are hereby required to lay the same, as soon as conveniently may be, before the lord lieutenant, or other chief governor or governors of Ireland for the time being, and the privy council of Ireland, whereupon it shall be lawful for the lord lieutenant, or other chief governor or governors for the time being, to make his or their order in the said privy council, thereby requiring and commanding such offender or offenders to surrender him, her, or themselves, within the space of forty days after the first publication thereof in the Dublin Gazette, to the lord chief justice, or any other of his majesty's justices of the court of King's Bench in Ireland, or to any one of his majesty's justices of the peace in Ireland, if the offence be committed in Ireland, or within the limits of any of the ports thereof, or within eight leagues of the coast thereof, who is hereby required, upon such offender or offenders surrendering him, her, or themselves, to commit him, her, or them, without bail or mainprize, to the county gaol, or to the gaol or prison of the place where he, she, or they shall surrender; to the end that he, she, or they may be forthcoming to answer the offence or offences wherewith he, she, or they shall stand charged, according to due course of law;

Offenders not
surrendering
when in-
dicted, and
required by
the privy
council; fe-
lony, death.

106. which order the said clerk of his majesty's said privy council, or his deputy or deputies, shall cause to be forthwith printed and published in two successive Dublin Gazettes, to be forthwith transmitted to the sheriff of the county where the offence shall be committed, if the same shall be committed in any county; and if the offence shall not be committed in any county, but within the limits of any port as aforesaid, or within eight leagues of the coasts of any part of Ireland, to be transmitted to the sheriff of any county in Ireland, near to the place where such offence shall be committed; which sheriff shall, within fourteen days after the receipt thereof, cause the same to be proclaimed between the hours of ten in the morning and two in the afternoon, in the market places, upon the respective market days of the two market towns in the same county in which, or near to the place where such offence shall have been committed, and a true copy of such order shall be affixed upon some publick place in such market towns; and in case such offender or offenders shall not surrender himself, herself, or themselves, pursuant to such order of the lord lieutenant, or other chief governor or governors of Ireland for the time being, to be made in council as aforesaid, he, she, or they, so neglecting or refusing to surrender him, her, or themselves as aforesaid, or escaping after such surrender, shall, from the day appointed for his, her, or their surrender as aforesaid, be adjudged, deemed, and taken to be convicted and attainted of felony, and shall suffer pains of death, as in cases of a person convicted and attainted by verdict and judgment of felony without benefit of clergy, if the offence be charged to have been committed in Ireland, or within the limits of any of the ports thereof, or within eight leagues of the coast thereof: and it shall and may be lawful to and for the said court of King's Bench, or the justices of oyer and terminer, or general gaol delivery for the county or place where such person or persons shall be, to award execution against such offender or offenders, in such manner as if he, she, or they had been convicted and attainted in the said court of King's Bench, or before such justices of oyer and terminer, or general gaol delivery respectively, if the offence be charged to have been committed within Ireland, or within the limits of any of the ports thereof, or within eight leagues of the coast thereof.

64. Provided always, and be it enacted, that it shall and may be lawful to and for any person so neglecting or refusing to surrender himself, herself, or themselves as aforesaid, to plead *non tenus* in arrest of such execution, that he or she was, at the time of issuing such proclamation, and continued to be, until the expiration of such forty days as aforesaid, out of Ireland, and shall aver that he or she did not fly for the offence where-with he or she shall stand charged as aforesaid; and thereupon a jury shall be impannelled to try and determine such plea; and if such plea shall be found for the prisoner or prisoners, *then and in such case*, he, she, or they shall forthwith plead

to the indictment for the offence wherewith he, she, or they shall stand charged as aforesaid, and shall be tried for such offence in like manner as if he, she, or they had surrendered himself, herself, or themselves in due time after such proclamation as aforesaid. 46 G. 3, c. 1 (N).

65. That if any person shall, after the expiration of the time appointed as aforesaid for the surrender of any such offender, harbour, receive, conceal, aid, abet, or succour such offender, knowing him or her to have been so charged as aforesaid, and to have been required to surrender by such order or orders as aforesaid, and not to have surrendered pursuant to such order or orders; every such person, being prosecuted for the same within one year after such harbouring, receiving, concealing, aiding, abetting, or succouring, and lawfully convicted thereof, shall be guilty of felony, and shall be transported for the space of seven years. Provided nevertheless, and it is hereby declared, that nothing herein contained shall be construed to prevent or hinder any judge, justice of the peace, magistrate, officer, or minister of justice, from taking, apprehending, and securing any such offender, for requiring whose surrender such order in council shall be made as aforesaid, by the ordinary course of law: and if any such offender, for requiring whose surrender such order in council shall be made as aforesaid, shall be taken and secured, in order to be brought to justice before the expiration of the time within which such offender shall be required to surrender by such order in council, then and in such case, no further proceedings shall be had upon such order made in council against such offender so taken and secured as aforesaid, but such offender shall be brought to trial by due course of law.

Harbouring offenders; felony, transportation.

Offenders may be proceeded against, in the ordinary course of law.

66. That if any person shall assault or beat any officer appointed by, or acting under *the said commissioners of customs and port duties*, or the said commissioners of inland excise and taxes, or any assistant of any such officer, in the seizing, distraining, or securing any goods, wares, or merchandize, under or by virtue of any act or acts in force in Ireland, relating to the revenues, matters, and things under the management of *the said commissioners of customs and port duties*, or of the said commissioners of inland excise and taxes, or either of them; or shall by force or violence rescue or carry away, or shall procure to be rescued or carried away, any such goods, wares, or merchandize, after such seizure, distraining, or securing; or shall, at or after such seizure, distraining, or securing, destroy or damage such goods, wares, or merchandize, or any part of them; then and in every such case, every person so offending, being thereof legally convicted, shall, for the first offence, forfeit the sum of one hundred pounds, and, upon failure of payment thereof, shall suffer imprisonment for the space of twelve calendar months; and for the second offence, shall be transported for the term of seven years.

Assaulting excise officers, rescuing or destroying goods seized; first offence £100, or imprisonment; second, transportation.

46 G. 3, c. 106.

Persons charged with misdemeanor or against any excise act in force in Ireland, shall enter into recognizance.

Prosecution for misdemeanor to be in two years.

Proof of having kept an office of excise, or acted as an officer, good, *prima facie*.

67. That whenever any person shall be arrested or taken before any justice of the peace, for any offence declared to be a misdemeanor by any act or acts in force in Ireland relating to the revenues, matters, and things under the management of *the said commissioners, of customs and port duties, or of the said commissioners of inland excise and taxes, or either of them*, such person shall in no case be admitted to bail, unless he shall first enter into a recognizance with two sufficient sureties, to his majesty, his heirs and successors, in the sum of two hundred pounds, and the sureties in one hundred pounds each, conditioned that such person shall appear at the then next ensuing court of oyer and terminer or general gaol delivery, to be holden for the county in which the offence was committed, or for which the justice before whom he shall be brought shall act, and shall there answer and plead to any indictment which may be found for such misdemeanor, without traversing the same; and such recognizance shall forthwith be transmitted to the clerk of assize, or other proper officer of the court of oyer and terminer or gaol delivery for such county.

68. Provided also, and be it enacted, that no person shall be prosecuted by indictment or otherwise, for any offence declared to be a misdemeanor by this act, or any act or acts in force in Ireland, relating to the revenues of *customs or excise*, or any of the revenues under the management of *the commissioners of customs and port duties, or of the commissioners of inland excise and taxes, or either of them*, unless the prosecution for such offence shall be commenced within two years next after the offence committed.

7 & 8 Geo. 4, c. 53 (a), s. 17.—That if, upon the trial of any indictment, information, action, suit, or prosecution whatsoever, or in any other legal or judicial proceeding, any question shall be made, or any doubt or dispute shall arise, touching or concerning the keeping of any office of excise, or whether any person is or was a commissioner or assistant commissioner of excise, or a collector or other officer of excise, or commissioned or appointed to act as such; evidence of the actual keeping of such office of excise, or that such person is, or at the time in question, was reputed to be such commissioner or assistant commissioner, or such collector or other officer, or does or did then act as such commissioner or assistant commissioner, or as such collector or other officer so commissioned and appointed (as the case may require), shall in every such case, be admitted, and be deemed and taken to be respectively sufficient and legal proof of such facts respectively, without producing or proving the particular commission, appointment, or other authority, whereby such person is or was commissioned or appointed to be such commissioner or assistant commissioner,

(a) Entitled, "An act to consolidate and amend the laws relating to the collection and management of the revenue of excise throughout Great Britain and Ireland."

or such collector or other officer as aforesaid ; unless by other evidence the contrary be made to appear ; any law, custom, or usage to the contrary thereof notwithstanding.

7 & 8 G. 4,
c. 53.

40. That if any person armed with any offensive weapon whatsoever, shall with force or violence assault or resist any officer of excise, or any person employed in the revenue of excise, or any person acting in the aid or assistance of such officer or person so employed, who, in the execution of his office or duty, shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize any goods or commodities forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise or customs, or who shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize any vessel, boat, cart, carriage, or other conveyance, or any horse, cattle, or other thing used in the removal of any such goods or commodities, or who shall arrest, or endeavour or offer to arrest any person carrying, removing, or concealing the same, or employed or concerned therein, and liable to such arrest ; then and in every such case, it shall be lawful for every such officer and person so employed, and person acting in such aid and assistance as aforesaid, who shall be so assaulted or resisted, to oppose force to force, and by the same means and methods by which he is so assaulted or resisted, or by any other means or methods, to oppose such force and violence, and to execute his office or duty : and if any person so assaulting or resisting such officer as aforesaid, or any person so employed, or any person acting in such aid and assistance as aforesaid, shall, in so doing, be wounded, maimed, or killed, and the said officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be sued or prosecuted for any such wounding, maiming, or killing ; it shall be lawful for every such officer or person so employed, or person acting in such aid and assistance, to plead the general issue, and give this act and the special matter in evidence in his defence ; and it shall be lawful for any justice or justices of the peace, or other magistrate or magistrates before whom any such officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be brought, for or on account of any such wounding, maiming, or killing as aforesaid, and every such justice of the peace and magistrate is hereby directed and required to admit to bail every such officer, and every person so employed, and every person acting in such aid and assistance as aforesaid ; any law, usage, or custom to the contrary thereof, in any wise notwithstanding.

Officers resisted in making seizures may oppose force to force ;

and if prosecuted, shall be admitted to bail, and may plead the general issue

41. That whenever any person shall be charged with violently assaulting or resisting as aforesaid, any officer of excise, or person so employed, or person acting in such aid and assistance as aforesaid, in the due execution of his office or duty ; and such charge shall, by affidavit or by certificate of an indictment or information being filed against such person for any such offence,

Persons indicted for resistance, shall give security to answer, or be committed.

7 & 8 G. 4,
c. 53.

be made to appear to any judge of any of his majesty's superior courts of record, in which such indictment or information shall be found or filed, or into which the same shall have been removed; it shall be lawful for such judge to issue his warrant in writing under his hand and seal, and thereby to cause any person, being a defendant in such indictment or information, to be apprehended and brought before him or some other judge of such court, or before some one of his majesty's justices of the peace, in order that such defendant may be bound to the king's majesty, with two sufficient persons as sureties, in such sum (the same not being in any case less than one hundred pounds) as in the said warrant shall be expressed, with condition to appear in such court at the time mentioned in such warrant, to answer his said majesty in the said court concerning any articles on behalf of his majesty, to be there objected against him for any such offence as aforesaid: and in case any such defendant shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice of the peace respectively, and they are hereby respectively directed and required to commit such defendant to the common gaol of the county, shire, division, city, town, or place where the offence shall have been committed, or where such defendant shall have been apprehended, until such defendant shall become bound as aforesaid, or shall be discharged by order of such court in term time, or by one of the judges of such court in vacation; and the recognizance to be taken thereupon shall be returned and filed in such court, and shall continue in force until such defendant shall have been acquitted of such offence, or, in case of conviction, shall have received judgment for the same, unless sooner ordered by such court to be discharged.

In case of commitment, a copy of the indictment shall be delivered to the gaoler, with notice of trial, and proceedings had thereon.

† *Sic.*

42. That where any such defendant is or shall be committed to, and detained in gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to the gaoler, keeper, or turnkey of the gaol wherein such defendant is or shall be so detained, with a notice thereon indorsed, that unless such defendant shall, within such space of time as shall be for that purpose limited and fixed by the court in which such indictment or information shall be found or filed, or into which the same shall have been removed, cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, and† appearance and the plea of not guilty will be entered thereto in the name of such defendant: and the prosecutor of such indictment or information shall also be at liberty to indorse on the copy of such indictment or information so delivered, a further notice, that the issue to be joined on such indictment or information will be tried in the next term, or at the next assizes, or at the next general gaol delivery or court of justiciary to be holden in or for the county, shire, division, city, town, or place in which the offence shall be alleged to have been committed,

or the venue laid in such indictment or information : and in case any defendant so committed or detained as aforesaid, shall neglect to cause an appearance and also a plea or demurrer to be entered in such court, to such indictment or information, within the space of time so to be limited and fixed by such notice as aforesaid; then, upon an affidavit being made and filed in such court, of the delivery of a copy of such indictment or information, with such notice as hereinbefore first mentioned indorsed thereon as aforesaid, to such gaoler, keeper, or turnkey, as the case may be, (which affidavit may be made before any judge or commissioner of the said court authorized to take affidavits in the said court,) it shall be lawful for the prosecutor of such indictment or information to cause an appearance and the plea of not guilty to such indictment or information to be entered in the said court for such defendant, and such proceedings shall be had thereupon, as if the defendant in such indictment or information had appeared and pleaded not guilty according to the usual course of such court : and if, upon the trial of such indictment or information, the defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon such defendant, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the court in which such indictment or information shall be found or filed, or into which the same shall have been removed, to order that such defendant shall be forthwith discharged out of custody as to such commitment.

7. & 8 G. 4,
c. 53.

If defendant do not appear and plead, the prosecutor may enter an appearance and plea for him.

43. And for the better and more impartial trial of any indictment or information which shall be found, commenced, or prosecuted for any such violent assault or resistance as aforesaid, be it enacted, that every such offence shall and may be inquired of, examined, tried, and determined in any county in England, if such offence shall have been committed in England or in any of the islands thereof; or in any county in Scotland, if the same shall have been committed in Scotland or in any of the islands thereof; or in any county in Ireland, if the same shall have been committed in Ireland or in any of the islands thereof; in such manner and form as if the same offence had been committed in such county respectively : and that whenever any person shall be convicted of any such violent assault or resistance as aforesaid, it shall be lawful for the court, before which any such offender shall be convicted, or which by law is authorized to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment with hard labour, for any term not exceeding the term of three years, either in addition to, or in lieu of any other punishment or penalty which may by law be inflicted or imposed upon any such offender; and every such offender shall thereupon suffer such sentence, in such place, and for such term as aforesaid, as such court shall think fit to direct.

Indictments for resisting officers may be tried in any county.

Offender punishable with imprisonment and hard labour.

44. That the commissioner or commissioners, and assistant commissioners of excise in Scotland and Ireland respectively, Commission-
ers &c. shall

7 & 8 G. 4,
c. 53.

keep distinct
accounts.

Rendering
false ac-
counts ; mis-
demeanor,
and inca-
pacity.

Forging or
uttering any
instrument,
to obtain
money from
the Bank of
England, on
account of
the receiver-
general of
excise ; fe-
lony.

and every collector, receiver, and other person throughout the united kingdom, who shall be intrusted with the collection, receipt, custody, or management of any part of the revenue of excise, shall keep and render such separate and distinct accounts, and in such manner and form, as shall from time to time be directed by the commissioners of excise, of all and every duty and duties, penalty and penalties, sum and sums of money collected, had, or received by him or them, or intrusted to his or their care or custody, and of all and every balance and balances of money in his or their hands, or under his or their control and management respectively : and if any commissioner, or assistant commissioner of excise in Scotland or Ireland, or if any such collector, receiver, or other person, in any part of the united kingdom, shall neglect or omit to keep and render such accounts as aforesaid, or shall knowingly render or furnish false accounts of or relating to any duty, or penalty, or sum of money collected, had, or received, or to be collected, had, or received by him or them, or intrusted to his or their care or custody, or of any balance of money in his or their hands, or under his or their control and management ; every such commissioner, assistant commissioner, collector, receiver, or other person so offending, and being thereof duly convicted, shall be adjudged guilty of a misdemeanor, and shall suffer the punishment of fine and imprisonment, at the discretion of the court in which such offender shall be prosecuted for such offence ; and shall, by such conviction, be rendered for ever incapable of holding or enjoying any office under the crown.

56. That if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in forging or counterfeiting the name or hand-writing of any receiver-general of excise, or of any excise comptroller of the cash as aforesaid, or of any of the persons duly authorized as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money, bills, notes, drafts, checks, or orders for the payment of money in the hands or custody of the governor and company of the bank of England on account of such receiver-general as aforesaid ; or if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in the forging or counterfeiting of any draft, instrument or writing in the form of a draft, instrument, or writing made by any receiver-general of excise, or by any excise comptroller of the cash as aforesaid, or by any person or persons authorized as aforesaid ; or shall utter or publish any draft, instrument, or writing so forged or counterfeited, knowing the same to be forged or counterfeited, with an intention to defraud his majesty, or any person whomsoever ; every person so offending, and being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, *and shall suffer death as in cases of felony, without benefit of clergy.*

108. That all goods or commodities whatsoever, which are or shall be prohibited, or which are or shall be subject to any duty or duties of excise, and which shall be stopped, detained, or taken by any police officer or peace officer, or any other person, under or by virtue of any act or acts of parliament, or under or by virtue of any other authority whatsoever, shall be conveyed, and the same is and are hereby directed and required to be forthwith conveyed to, and deposited and lodged in the chief office of excise, if the same shall have been stopped, detained, or taken within the limits of the chief office; or in the nearest office of excise, if in any other part of the united kingdom; in order that all such goods or commodities as aforesaid, and the person or persons in whose custody or possession the same were found, may be prosecuted or proceeded against, as the nature of the case shall or may require; any thing in any act or acts of parliament to the contrary thereof notwithstanding.

7 & 8 G. 4,
c. 53

Excisable
goods seized,
shall be
lodged in
excise office.

109. Provided always, that in case any such goods or commodities as aforesaid shall be stopped, detained, or taken by any police officer, or peace officer, or any other person, on suspicion of the same having been feloniously stolen, or taken, or received; it shall be lawful to and for such police officer, or peace officer, or other person so stopping, detaining, or taking the same, to convey to, deposit, and lodge forthwith all such goods and commodities as aforesaid in the office of the police office nearest to the place where the same shall have been so stopped, detained, or taken as aforesaid, or any other convenient place directed by the justice or justices of the peace before whom the same shall be carried, there to remain in order to be produced at the trial of any person or persons who shall be charged with feloniously stealing, taking, or receiving the same: and every such police officer, or peace officer, or other person who shall so stop, detain, or take any such goods or commodities as aforesaid, after he shall have stopped, detained, or taken the same as aforesaid, shall forthwith give notice thereof in writing at the chief office of excise, if the same shall have been stopped, detained, or taken within the limits thereof; and if the same shall have been stopped, detained, or taken in any other part of the united kingdom, then at the office of excise nearest to the place where the same shall have been so stopped, detained, or taken; and any officer of excise shall thereupon be permitted to examine and take account of the same.

Excisable
goods taken
on suspicion
of felony shall
be lodged at
the police
office, and
notice there-
of given at
the excise
office.

110. That when and so soon as any person or persons charged with feloniously stealing, taking, or receiving any such goods or commodities as aforesaid, shall have been tried for such offence, all such goods and commodities respectively as aforesaid shall immediately be conveyed to, and deposited in the chief office of excise, or other office of excise as aforesaid, in order that prosecution or proceedings may be had for the condemnation of such goods or commodities for such cause or causes of forfeiture as the same shall be liable to, or that the same may be

After trial,
the goods
shall be de-
posited in
the excise
office, in or-
der that they
may be con-
demned or
restored.

7 & 8 G. 4,
c. 53.

restored, upon payment of such duty or duties as may be due in respect thereof, or upon such conditions as the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in Scotland and Ireland respectively, shall think fit, to such person or persons as shall be proved to be the legal proprietor or proprietors thereof respectively, or for the purpose of being otherwise dealt with according to law.

Goods not so
deposited¹
shall be for-
feited.

111. That in case any such goods or commodities, which shall be so stopped, detained, or taken, shall not be conveyed to, and deposited in the chief office of excise or other office of excise in the manner by this act directed, all such goods or commodities which shall not be so conveyed to, and actually deposited in the chief office of excise, or other office of excise as aforesaid, shall be forfeited; and the person or persons in whose care, custody, or possession the same shall be, and who shall neglect or refuse so to convey to, and deposit the same as aforesaid, shall forfeit and lose the sum of twenty pounds.

Former en-
actments in-
consistent
with, or re-
pugnant to
this act, re-
pealed.

127. That from and after the commencement of this act (a), all laws, powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things provided for or contained in any act or acts of parliament in force at and immediately before the commencement of this act, relating to the revenue of excise in any part of the united kingdom, or to any matter or thing expressly provided for by this act, which are repugnant to, or inconsistent with the several matters, clauses, provisions and regulations of this act, or any of them, shall be, and the same are hereby respectively repealed; and shall no longer be put in force or observed in any part of the united kingdom; save and except so far as the same [*repeal any former enactment, or relate to the recovery of any duty, penalty, or forfeiture already charged or incurred by virtue of any act now repealed, whether proceedings for the recovery thereof may or not have been taken.*]

Opposing
officers in
seizing illicit
spirits, malt,
&c., felony,

1 & 2 Will. 4, c. 55 (b), s. 29.—That every person who shall, with any fire-arms, swords, bludgeons, sticks, stones, or other offensive weapons, assault, or with force and violence obstruct any officer of excise, or other person acting in his aid, in searching for, seizing, or securing, or in destroying any spirits, low-wines, singlings, wort, wash, or pot-ale, or any still, still-head, or worm, or any back, vessel, or utensil, or any malt, or corn, or grain, or other goods, or in seizing and securing any horse, cattle, carriage, cart, boat, or vessel, or in arresting, securing, or detaining any person liable to arrest under any of the provisions of this act; or shall rescue, or attempt to rescue

(a) Viz., the 5th of January, 1828—s. 129.

(b) Entitled, “*An act to consolidate and amend the laws for suppressing the illicit making of malt, and distillation of spirits in Ireland.*”

are made by any officer of excise, or any person and detained by any officer of excise; or who shall, to the number of two or more, be found armed with any fire-arms, cudgels, sticks, or stones, or other deadly or offensive weapons, or wearing any mask, vizard, or other disguise of the face, or removing, carrying, and conveying, or having in his custody and possession, or assembled together for the purpose of, or in order to be aiding and assisting, or being aiding and assisting in carrying and conveying any malt or spirituously made or distilled, or the duties whereon shall not have been fully paid, or any still, still-head, or worm of a still, or retort, wash, pot-ale, low-wines, or singlings, or any corn, or malt, or making into malt, or any keg, cask, or vessel, which contained spirits illegally distilled, or the duties on which shall not have been fully paid, shall be guilty of felony, and on conviction, shall be transported for the term of seven years, or in the discretion of the court, sentenced to be imprisoned and kept to hard labour for any time not exceeding more than two nor less than six calendar months.

1 & 2 W. 4,
c. 55.

4, c. 16 (a), s. 3.—That every person who shall cause or procure to be made, or shall aid or assist in making, or shall knowingly have in his, her, or their custody or possession, not being authorised by the said commissioners of excise, and without lawful excuse, the proof whereof shall lie on the person accused, any mould or frame or other instrument or contrivance, or any mark or device, or any word or letter, or any combination of the words “excise office,” or any other words, figures, marks, or devices peculiar to, and appearing in the substance of the paper used by the said commissioners for permits, or any part of such words, figures, marks, or devices, or any mark, intended to imitate or pass for the same; and every person, except as before excepted, who shall make, or cause to be made, or aid or assist in the making any paper, or any part of such words, figures, marks, or devices, or any mark, intended to imitate and pass for the same, or any part of such words, figures, marks, or devices, or any mark, intended to imitate and pass for the same, shall be guilty of felony, and on conviction, shall be transported for the term of seven years, or in the discretion of the court, sentenced to be imprisoned and kept to hard labour for any time not exceeding more than two nor less than six calendar months.

Unwarrantably making paper to imitate excise paper, or forging plates; felony, transportation.

Offences relating to the Excise. [P. II.]

c. 16. part of such words, figures, marks, or devices, or of any of them, intended to imitate and pass for the same, shall be visible; and every person, except as before excepted, who shall by any art, mystery, or contrivance, cause or procure, or aid or assist in causing or procuring the words "excise office," or any other words, figures, marks, or devices peculiar to, and appearing in the substance of the paper used by the commissioners of excise permits, or any or part of such words, figures, marks, or devices, or any of them, intended to imitate and pass for the same, appear visible in the substance of any paper whatever; every person, not authorised or appointed as aforesaid, who shall engrave, cast, cut, or make, or cause or procure to be engraved, cast, cut, or made, or aid or assist in engraving, casting, cutting, or making any plate, type, or other thing, in imitation or resemblance to resemble any plate or type, made or used by the directors of the commissioners of excise, for the purpose of marking or printing the paper to be used for permits; and every person except as before excepted, who shall knowingly have in his or her custody or possession, without lawful excuse, proof whereof shall lie on the person accused, any such plate or type; for every such offence, be adjudged a felon, and shall be imprisoned for the term of seven years, or shall be imprisoned at the discretion of the court before whom such person shall be brought, for any period not less than two years.

g
s, or
g
lonj. 4. That every person who shall counterfeit or forge, or cause or procure to be counterfeited or forged, or assist in counterfeiting or forging any permit, or part of any permit, or shall counterfeit any impression, stamp or mark, figure or device, or provide or appointed, or to be provided or appointed by the commissioners of excise to be put on such permit, or shall give, or make use of any counterfeited or forged permit, or shall cause the same or any part thereof to be counterfeited or forged, or shall utter, give, or make use of any permit with any such counterfeited impression, stamp or mark, figure or device, or shall cause the same to be counterfeited; or if any person or persons shall knowingly or willingly accept or receive any counterfeited or forged permit, or any permit with any such counterfeited impression, stamp or mark, figure or device thereon, knowing the same to be counterfeited; shall, for every such offence, be adjudged guilty of a misdemeanor, and shall be transported for the term of seven years, or fined and imprisoned at the discretion of the court.

deli-
false
; mis-
nor,
apa- 15. That every officer of excise who shall deliver or suffer to be delivered out, any paper prepared, or provided or appointed by the commissioners of excise to be used for permits in blank, or before such permit shall be filled up and made agreeable to, and in conformity with a request note; and every officer who shall knowingly give or grant any permit to any person not entitled to receive the same, or shall knowingly or grant any false or untrue permit, or shall make any

untrue entry in the counterpart of any permit given or granted ^{2 W. 4, c. 16.} by him, or shall knowingly or willingly receive or take any goods or commodities into the stock of any person or persons brought in with any false or untrue or fraudulent permit, or shall knowingly or willingly grant any permit for the removal of any goods or commodities out of or from the stock of any person or persons who shall have received or retained such goods or commodities, or any of them, under or by virtue or pretext of any false, untrue, forged, or fraudulent permit, or shall knowingly or willingly give any false credit in the stock of any person or persons beyond the credit to which such stock is justly and truly entitled, so as to enable such person or persons falsely and fraudulently to obtain a permit or permits; or if any such officer shall knowingly or willingly suffer the same to be done, directly or indirectly; every officer, so offending in any of the cases aforesaid, shall be guilty of a misdemeanor, and, on conviction, shall suffer such punishment by fine and imprisonment, or fine or imprisonment, as the court shall award; and every officer so convicted shall from thenceforth be incapable of holding any office or place in or relating to any of the revenues of the united kingdom.

4 & 5 Will. 4, c. 51, s. 25.—That if any person liable to be arrested and detained under any act or acts relating to the revenue of excise shall not be detained at the time when he shall be discovered committing the offence for which he is so liable, or after detention shall make his escape, any officer of excise may stop, arrest, and detain such person at any time afterwards, and carry him before any justice or justices of the peace, to be dealt with as if detained at the time of committing the offence.

Persons liable to arrest may be detained at any time after the offence.

30. And in order to prevent the frequent use of terms and expressions in acts, and to give effect to those used; be it further enacted, that whenever in this or any other act relating to the revenue of excise, the word or words, 'writing, wrote,' or 'written,' shall be used, the same shall include 'printing,' or 'printed,' or 'partlywritten,' and 'partly printed;' and when the singular number or masculine gender only shall be used, such word or words shall be construed to mean several persons as well as one, and females as well as males, and bodies corporate and politic as well as individuals, and several matters and things, as well as one matter or thing, unless it be otherwise specially provided for, or there be something in the subject or context repugnant to such construction.

Construction of terms in excise acts.

SECTION 4.

Offences against the Stamp Laws.

Forging
stamps on
plate; fe-
lony, trans-
portation.

47 Geo. 3, sess. 2, c. 15 (a), s. 16.—That if any person shall cast, forge, or counterfeit, or cause or procure to be cast, forged, or counterfeited, any mark or stamp used or directed to be used in pursuance of this act, for the marking or stamping of gold or silver plate, or shall cast, forge, or counterfeit, or shall cause or procure to be cast, forged, or counterfeited, any mark, stamp, or impression, in imitation of, or to resemble any mark, stamp, or impression made or to be made with any mark or stamp used or to be used as aforesaid, or shall mark or stamp, or cause or procure to be marked or stamped, any wrought plate of gold or silver, or any wares of silver, brass, copper, or other metal, gilt over or plated, and resembling plate of gold or silver, with any mark or stamp which hath been or shall be cast, forged, or counterfeited at any time, in imitation of, or to resemble any mark or stamp used or to be used as aforesaid, or shall transpose or remove, or cause or procure to be transposed or removed from one piece of wrought plate to another piece of wrought plate, or from any piece of wrought plate to any vessel of silver, brass, or other metal as aforesaid, any mark, stamp, or impression made or to be made, by or with any mark or stamp used or to be used as aforesaid, or shall sell, exchange, or expose to sale, or export out of Ireland, any wrought plate of gold or silver, or any vessel of silver, brass, or other metal as aforesaid, with any such forged or counterfeited mark, stamp, or impression thereon, or with any mark, stamp, or impression which hath been or shall be transposed, or removed, or cut out from any piece of wrought plate, knowing such mark, stamp, or impression to be forged, counterfeited, or transposed, cut out, or removed as aforesaid, or shall wilfully or knowingly have or be possessed of any mark or stamp which hath been or shall be forged or counterfeited, in imitation of, or to resemble any mark or stamp used or to be used as aforesaid; every such person offending in any or either of such cases aforesaid, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be sentenced to be transported for the term of seven years, in such manner as other felons may be transported under any act or acts in force in Ireland. And if any person or persons shall cut out of one piece of wrought plate, any stamp, mark, or impression, made or to be made by or with any mark or stamp to be used as aforesaid, with intent

(a) Entitled, "*An act to provide for the regulating and securing the collection of the duty on gold and silver plate wrought or manufactured in Ireland.*"

to transpose or remove such stamp, mark, or impression, or with intent that the same shall and may be transposed or removed from one piece of wrought plate to another piece of wrought plate, or from any piece of wrought plate to any vessel of silver, brass, copper, or other metal, gilt or plated, and resembling plate of gold or silver; every such person so offending shall forfeit the sum of two hundred pounds.

47 G. 3, st 2,
c. 15.

- 56 Geo. 3, c. 56 (a), s. 37.—That if any person, in any part of the united kingdom of Great Britain and Ireland, or of any of the dominions thereto belonging, shall counterfeit or forge, or cause or procure to be counterfeited or forged, any type, die, mark, or stamp, to resemble, or represent, or be mistaken for any type, die, mark, or stamp at any time heretofore kept or used, or hereafter to be kept or used at the stamp office in Dublin, for denoting the charging or marking on vellum, parchment, or paper, or other matter directed to be stamped, any of the stamp duties payable under or by virtue of any act or acts which has been, or shall be at any time in force in Ireland, although such act or acts may not be in force, or such type, dye, mark, or stamp may not be kept or used at the said stamp office at the time of such forging or counterfeiting; or if any person or persons (save and except such person or persons as shall be lawfully entitled and authorised to have and to use the same for the purpose of stamping vellum, parchment, or paper, or other matter directed to be stamped by or under the authority of the said commissioners of stamps for the time being,) shall have in his, her, or their possession any type, dye, or mark, or stamp made to resemble, or represent, or be mistaken for any type, dye, mark, or stamp heretofore kept or used, or hereafter to be kept or used at the said stamp office, for denoting the charging or marking on vellum, parchment, or paper, or other matter directed to be stamped, any of the said stamp duties so payable as aforesaid, although such type, dye, mark, or stamp shall not be then kept or used at the said stamp office, or the duty denoted thereby shall not be then payable in Ireland; or if any person or persons shall mark or impress, or cause or procure to be marked or impressed on any vellum, parchment, or paper, or other matter, which heretofore was, or hereafter shall be directed to be stamped, any device, mark, or impression to resemble, or represent, or be mistaken for any device, mark, or impression which has been or shall be used, kept or made, marked or impressed at the stamp office in Dublin, for denoting the charging or marking on vellum, parchment, or paper, or other matter or thing so directed to be stamped, any of the said stamp duties so payable under or by virtue of any act

Forging
stamps, or
fraudulently
using them,
felony, trans-
portation.

(a) Entitled, "*An act to repeal the several stamp duties in Ireland, and also several acts for the collection and management of the said duties, and to grant new stamp duties in lieu thereof; and to make more effectual regulations for collecting and managing the said duties.*"

56 G. 3, c. 56.

of parliament which shall be, or shall have been in force in Ireland, at or before the time when such mark, device, or impression shall have been so used, kept or made, marked or impressed, at the said office, although such act or acts may not be in force, or such device, mark, or impression may not be used or kept, marked or impressed at the said office, at the time of such offence committed; or if any person or persons shall use, utter, vend, or sell, or cause to be used, uttered, vended, or sold, or shall have in his or her possession, with intent to use, utter, vend, or sell the same, any vellum, parchment, or paper, or other matter, with any counterfeit device, mark, or impression thereon, to resemble, or represent, or be mistaken for any device, mark, or impression which has been or shall be used, kept, or made at the stamp office aforesaid for the purposes aforesaid, or any of them, although not then used or kept for the said purposes, or any of them, or although the duty denoted thereby shall not be then payable in Ireland, knowing such device, mark, or impression to be counterfeited; or if any officer or officers in the employment of the commissioners of stamps, or any other person or persons whatever, shall, with intent to defraud his majesty, his heirs or successors, mark or impress, or cause or procure to be marked or impressed, or be aiding, abetting, or assisting in marking or impressing, or in causing or procuring to be marked or impressed, any stamp, mark, or impression denoting any of the said stamp duties on any vellum, parchment, or paper, or other matter directed to be stamped, not delivered to him or them by, or by the authority of the said commissioners of stamps for the purpose of being stamped with any type, dye, mark, or stamp, which has been or shall be used, kept, or made at the stamp office aforesaid, for denoting the charging or marking on vellum, parchment, or paper, any of the said stamp duties so payable under or by virtue of any act of parliament, although such type, die, mark, or stamp shall not be then kept at the said stamp office, or the duty denoted thereby shall not be then payable in Ireland; or if any person or persons shall, with intent to defraud his majesty, his heirs or successors, knowingly have in his, her, or their possession any vellum, parchment, or paper, or other matter required to be stamped, so fraudulently stamped or marked with any mark or stamp to denote any of the aforesaid duties; then and in every of the said cases, any and every such person so offending, and being thereof lawfully convicted, shall be adjudged a felon, and shall be transported for life.

Licensed
dealers, sel-
ling forged
stamps, must
prove they
bought them
at the stamp
office, or of a
distributor.

38. That whenever any vellum, parchment, or paper shall at any time be found in the possession of any person licensed to deal in and retail stamps in Ireland, or who shall have been so licensed within six calendar months then next preceding, having impressed thereon any counterfeit device, mark, or impression, to resemble or represent, or intended or liable to be mistaken for any device, mark, or impression which has been, or shall be used, kept, or made at the stamp office aforesaid, for the pur-

poses aforesaid, or any of them, although such device, mark, or impression shall not then be used or kept for the said purposes, or any of them, or although the duty denoted thereby shall not be then payable in Ireland, then and in every such case, the person in whose possession such vellum, parchment, or paper shall be so found, shall be deemed and taken to have so had the same in his or her possession, with intent to use, utter, or vend the same, with such counterfeit device, mark, or impression thereon, unless the contrary shall be satisfactorily proved, and shall also be deemed and taken to have had such vellum, parchment, or paper, so in his or her possession, knowing the stamps, devices, marks, or impressions thereon to be forged, false, and counterfeited; and such person shall be liable to all penalties and punishments by law imposed or inflicted upon persons using, uttering, or vending false, forged, or counterfeit stamps, or having such false, forged, or counterfeit stamps in their possession, knowing the same to be forged, unless such person shall in all cases satisfactorily prove that such vellum, parchment and paper, and the stamps thereon, was or were procured by or for such person at the stamp office in Dublin, or from some distributor of stamps in Ireland.

39. That, on complaint made before any one justice of the peace, upon the oath of one credible witness, that there is just cause to suspect any one or more person or persons of being or having been concerned in making any false or counterfeit type, die, mark, or stamp, or of unlawfully having any such type, die, mark, or stamp in his or her possession, or of unlawfully marking or impressing any vellum, parchment, or paper with any such device, mark, or impression, or of unlawfully having in his or her possession any vellum, parchment, paper, or other matter, with any counterfeit device, mark, or impression thereon, or of unlawfully or fraudulently marking or impressing, or causing or procuring to be marked or impressed, or of aiding, abetting, or assisting in marking or impressing, or in causing or procuring to be marked or impressed, any stamp, mark, or impression on any vellum, parchment, paper, or other matter, not delivered to him under the authority of the commissioners of stamps, or of knowingly having in his or her possession any vellum, parchment, paper, or other matter as aforesaid, unlawfully or fraudulently stamped or marked contrary to any of the purposes or regulations contained in this act, or in any other act or acts relating to the stamp duties in Ireland; then and in each and every or any of the said cases, it shall and may be lawful to and for such justice, by warrant under his hand, to cause the dwelling-house, room, workshop, outhouse, or other building, yard, garden, or other place belonging to such suspected person or persons, or where any such person or persons shall be suspected to carry on any such marking or counterfeiting, or to secrete any such type, die, mark, or stamp, or any such vellum, parchment, paper, or other matter, or any of the machinery necessary or

Premises of persons suspected of having forged stamps may be searched.

56 G. 3, c. 56. applicable for or to the making any such impression as aforesaid, to be searched for any such type, die, mark, stamp, vellum, parchment, paper, machinery, or other matter or thing whatsoever; and if any of the said several matters and things shall be found in any place so searched, or in the custody or possession of any person or persons whomsoever, not having the same by some lawful authority, it shall and may be lawful to and for the person or persons so finding the same, to seize, and he and they is and are hereby authorised and required to seize the same respectively, and to carry the same forthwith to the justice by whom such warrant shall be granted, or to any other justice of the peace of the county, city, district, or place where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any of the offences aforesaid, in some court of justice proper for the determination thereof; and afterwards, all and every the said matters and things so seized, whether so produced in evidence or not, shall, by order of the court where such offender or offenders shall be tried, or by order of some justice of the peace, in case there shall be no such trial, be defaced or destroyed, or otherwise disposed of, as such court or such justice shall direct.

Making or using paper in imitation of that used by the stamp office, felony.

52. That if any person, not being an officer, workman, servant, or agent for the time being of the said commissioners of stamps, and authorised and appointed by them for that purpose and for their use only, shall make or use, or cause or procure to be made or used, or knowingly aid or assist in making or using, or, without being authorised and appointed as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse, the proof whereof shall be on the person accused, any frame, mould, or instrument for the making of paper, in the substance whereof the words "stamp office," or the greater part of such words would be visible, or in the substance whereof any device or distinction would be visible peculiar to and appearing in the substance of the paper which shall from time to time be used by the commissioners of stamps as aforesaid; or shall make, or cause or procure to be made, or knowingly aid or assist in making any paper, in the substance whereof there shall be visible the said words "stamp office," or the greater part of such words, or any such device or distinction peculiar to and appearing in the substance of the paper which shall be so used by the said commissioners of stamps; or if any person, not being authorised or appointed as aforesaid, shall knowingly have in his or her custody or possession, without lawful excuse, the proof whereof shall be on the person accused, any paper whatsoever, in the substance whereof there shall be visible the words "stamp office," or the greater part of such words, or any device or distinction peculiar to and appearing in the substance of paper so from time to time used by the said commissioners; or if any person, not being authorised or appointed as aforesaid, shall by

any art, device, mystery, or contrivance, cause or procure, ^{56 G. 3, c. 56.} or knowingly aid or assist in causing or procuring to appear in the substance of any paper whatsoever the words "stamp office," or the greater part of such words, or any such device or distinction peculiar to and appearing in the substance of the paper which shall be so used by the said commissioners of stamps; every person so offending in any of the said cases, and being thereof lawfully convicted, shall for such offence be adjudged a felon, and shall be transported for the term of his or her life.

5 Geo. 4, c. 41, s. 3, (*pars.*)—That in every prosecution for embezzling or stealing such vellum, parchment, or paper so stamped, marked, and impressed as aforesaid, or for any other offence for or relating to the same respectively, it shall be sufficient in the indictment or information to state and describe the property in the same to be in his majesty, his heirs and successors; which property shall be deemed and taken to be vested in his said majesty, his heirs and successors, accordingly. Description of property in indictments.

7 & 8 Geo. 4, c. 55, s. 6.—That if, in any court whatever, upon any indictment, information, trial, proceeding, or occasion whatever, and whoever shall be parties therein, any question shall arise concerning any commissioner of stamps, or concerning any officer, or person acting or employed under the authority of any act relating to the duties under the management of the commissioners of stamps, or by or under the authority or orders of such commissioners, or concerning the right or title of any such commissioner, officer, or person respectively, to hold, exercise, enjoy, execute, or perform any such office, duty, or employment, then and in every such case it shall be sufficient to prove that any such commissioner, or officer, or person respectively, was reputed to be, and did act as, and did in fact execute the office or employment of such commissioner, officer, or person respectively, at the respective time or times when the matters in controversy shall happen to have been done or committed, or omitted or neglected to have been done or performed; and in every such case such proof shall be deemed and taken to be good and legal evidence, without producing or proving the particular patent, appointment, commission, deputation, authority, or order whereby any such commissioner, officer, or other person was constituted, appointed, or employed, and without any evidence being given that such commissioner, officer, or other person had performed or obtained the several requisites or authorities, or any of them, prescribed by law, for the enabling or authorizing such commissioner, officer, or other person respectively, to execute such office, duty, or employment respectively, unless by other evidence the contrary be made to appear; any law, custom, or usage to the contrary thereof in any wise notwithstanding. Proof that a commissioner or officer acted as such, sufficient, without producing commission &c., unless contrary be shewn.

9 G. 4, c. 18.

Officers of stamps may search houses where cards or dice are made or sold.

Officers of stamps attended by a constable and warrant, may break open the premises of unlicensed persons where cards or dice are suspected to be made.

9 Geo. 4, c. 18 (a), s. 18.—That it shall and may be lawful to and for any officer thereto appointed by the said commissioners, to enter into any house or place where any playing cards or dice are or shall be made or sold, or exposed to sale, or uttered, or shall be suspected to be made or sold, or to be exposed to sale or uttered, and there to search and see whether any and what quantity of such cards or dice shall be therein, either made, or in the progress of being made, or sold, or exposed to sale, or uttered, and whether any cards or dice which may be there found made, or in the progress of being made, or sold, or exposed to sale, or uttered, be duly stamped, and to take an account thereof; and if any person shall refuse entrance or liberty of search, for the purpose aforesaid, to such officer, or shall molest him in such search, every such person shall, for every such offence, forfeit and pay the sum of twenty pounds.

19. That whenever there shall be cause to suspect that any person shall make, or cause to be made any playing cards or dice, in any house or place whatsoever, in any part of the united kingdom, without license duly obtained as by this act required, upon affidavit being made of such suspicion by any person, before any justice of the peace for the county or place where such cards or dice shall be or shall be suspected to be making or made, it shall and may be lawful for any officer employed by, and acting under the commissioners of stamps, in the day time, and in the presence of a constable or other lawful officer of the peace (who is hereby required to be aiding and assisting therein), by warrant from such justice of the peace before whom such affidavit shall be made, to be directed to such officer of stamps as aforesaid, which warrant the said justice of the peace is hereby authorised and required to grant, to break open the door or any part of such house or place in which any such cards or dice shall so as aforesaid be suspected to be so made or making, and thereupon to enter into such house or place, and to seize all cards or dice which shall be therein found made, or begun to be made, and all the tools, materials, and utensils for making such cards or dice which shall be there found; and all such cards, dice, tools, materials, and utensils shall be seized and carried away, and shall be detained and lodged in any place appointed for that purpose by the said commissioners or their proper officer, and shall be absolutely forfeited, and shall and may be sold or destroyed by the direction and at the discretion of the said commissioners.

(a) Entitled, "*An act to repeal the stamp duties on cards and dice made in the united kingdom, and to grant other duties in lieu thereof; and to amend and consolidate the acts relating to such cards and dice, and the exportation thereof.*"

That if any person shall forge or counterfeit, or shall procure to be forged or counterfeited, any type, die, stamp, mark, plate, or device, or any part of any type, die, stamp, mark, plate, or device, which shall be at any time made, or used, by or under the authority of the commissioners of stamps in pursuance of this act; or shall counterfeit, or shall cause or procure to be counterfeited or resembled, impression of any such type, die, seal, stamp, mark, plate, or any part thereof, upon any playing card or dice, or any label, thread, or paper; or shall forge or counterfeit name, hand-writing, or signature of any sealing officer or officer of stamps, to or upon any wrapper, paper, or card in which any dice shall be actually enclosed; or shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, any mark or name, or any part of any mark or name, directed to be used by the commissioners of stamps in pursuance of this act, in order to distinguish the maker of any playing cards or dice respectively, and printed or marked on, or to, or making part of the wrapper, label, or paper, in which any playing cards or dice shall be actually enclosed, with intent to defraud his majesty, his heirs or successors, of any of the duties at any time by law payable upon cards or dice; or to utter, or sell, or expose to sale, or part with for use in play, any card, die, ace of spades, label, wrapper, or Jew whatsoever, with such counterfeit seal, stamp, mark, device, impression, or signature, knowing the same to be counterfeit; or to privately or fraudulently use any seal, stamp, mark, plate, or label, at any time provided, made, or used by or under the authority of the commissioners of stamps in pursuance of this act, with intent to defraud his majesty, his heirs or successors, of any of the duties at any time by law payable upon cards or dice; every person convicted of any such offence shall, by the form of law shall be adjudged a felon, *and shall suffer*

9 G. 4, c. 18.

Forging stamps for cards, dice, &c., or uttering them with counterfeit stamps; felony, death.

That if the buyer or seller, or any person concerned in buying, or selling, or exposing to sale, or uttering any ace of spades, playing cards, dice, label, or wrapper, contrary to this act; or if any person, concerned in the unlawful relanding of playing cards or dice, shipped for exportation under this act, or convicted in any other offence against this act, shall give information to the commissioners of stamps of any like offence committed by any other person concerned in any such offence, it shall be lawful for the said commissioners, if they shall think fit, to direct that such informer shall be admitted to give evidence against such other person; and in case of such direction, such informer shall be admitted to give evidence, and shall be deemed

Informers indemnified.

1 G. 4, c. 18.



Newspapers
shall not be
printed or
published, un-
less a declaration
be made at the
stamp office.

a competent witness accordingly, and shall be indemnified against all penalties previously incurred by such informer under this act.

6 & 7 Will. 4, c. 76 (a), s. 6.—That no person shall print or publish, or shall cause to be printed or published, any newspaper, before there shall be delivered to the commissioners of stamps and taxes, or to the proper authorized officer at the head office for stamps, in Westminster, Edinburgh, or Dublin respectively, or to the distributor of stamps or other proper officer appointed by the said commissioners for the purpose, in or for the district within which such newspaper shall be intended to be printed and published, a declaration in writing, containing the several matters and things hereinafter for that purpose specified; that is to say, every such declaration shall set forth the correct title of the newspaper to which the same shall relate, and the true description of the house or building wherein such newspaper is intended to be printed, and also of the house or building wherein such newspaper is intended to be published, by or for or on behalf of the proprietor thereof, and shall also set forth the true name, addition, and place of abode of every person who is intended to be the printer, or to conduct the actual printing of such newspaper, and of every person who is intended to be the publisher thereof, and of every person who shall be a proprietor of such newspaper who shall be resident out of the United Kingdom, and also of every person resident in the United Kingdom who shall be a proprietor of the same, if the number of such last mentioned persons (exclusive of the printer and publisher) shall not exceed two, and in case such number shall exceed two, then of such two persons, being such proprietors resident within the United Kingdom, the amount of whose respective proportional shares in the property, or in the profit or loss of such newspaper, shall not be less than the proportional share of any other proprietor thereof resident in the United Kingdom, exclusive of the printer and publisher, and also where the number of such proprietors resident in the United Kingdom shall exceed two, the amount of the proportional shares or interests of such several proprietors, whose names shall be specified in such declaration, and every such declaration shall be made and signed by every person named therein, as printer or publisher of the newspaper to which such declaration shall relate, and by such of the said persons named therein as proprietors, as shall be resident within the United Kingdom; and a

(a) Entitled, “*An act to reduce the duties on newspapers, and to amend the laws relating to the duties on newspapers and advertisements.*”

ation of the like import shall be made, signed, and delivered in like manner, whenever and so often as any share, interest or property soever, in any newspaper named in any such declaration, shall be assigned, transferred, divided, or changed of the parties or by operation of law, so that the respective proportional shares or interests of the persons named in any declaration as proprietors of such newspaper, or either of them, shall respectively become less than the proportional share or interest of any other proprietor thereof, exclusive of the printer and publisher; and also whenever and so often as any printer, publisher, or proprietor, named in any such declaration, or any person conducting the actual printing of the newspaper named in any such declaration, shall be changed, or shall change his place of abode; and also whenever and so often as the title of such newspaper, or the printing office, or the place of publication thereof shall be changed; and also whenever in any declaration or on any occasion, or for any purpose, the said commissioners, or any officer of stamp duties authorized in that behalf, shall require such declaration to be made, signed, and delivered; and shall cause notice in writing for that purpose to be served on any person, or to be left or posted at any place mentioned in the last preceding declaration delivered as aforesaid, as being the printer, publisher, or proprietor of such newspapers, or as the place of printing or publishing any such newspaper respectively; and every such declaration shall be made before the printer or more of the said commissioners, or before any officer of stamp duties, or other person appointed by the said commissioners either generally or specially in that behalf; and such commissioners, or any one of them, and such officer, or other person, are and is hereby severally and respectively authorized to demand and receive such declaration as aforesaid: and if any person shall knowingly and wilfully sign and make any such declaration, in which shall be inserted or set forth the name, name, or place of abode of any person, as a proprietor, printer, publisher, or conductor of the actual printing of any newspaper to which such declaration shall relate, who shall not be a proprietor, printer, or publisher thereof; or from which shall be derived the name, addition, or place of abode of any proprietor, printer, publisher, or conductor of the actual printing of such newspaper, contrary to the true meaning of this act; or in which shall be uttered or thing by this act required to be set forth, shall be uttered or thing required by this act to be truly set forth, shall be entirely omitted; every such offender, being convicted thereof, shall be deemed guilty of a misdemeanor.

6 & 7 W. 4, c. 76.

Fresh declaration to be made in certain cases.

Making false or defective declaration; misdemeanor.

That all such declarations as aforesaid shall be filed and in such manner as the commissioners of stamps and Declaration to be filed and certified

6 & 7 W. 4, c.
76.

copies to be
admitted in
evidence
against the
persons mak-
ing same.

Commission-
ers &c.; to
deliver certi-
fied copies of
declarations,
and the same
to be received
in evidence.

taxes shall direct for the safe custody thereof; and copies thereof, certified to be true copies, as by this act is directed, shall respectively be admitted in all proceedings, civil and criminal, and upon every occasion whatsoever, touching any newspaper mentioned in any such declaration, or touching any publication, matter, or thing contained in any such newspaper, as conclusive evidence of the truth of all such matters set forth in such declaration as are hereby required to be therein set forth, and of their continuance respectively in the same condition down to the time in question, against every person who shall have signed such declaration, unless it shall be proved that, previous to such time, such person became lunatic; or that, previous to the publication in question on such trial, such person did duly sign and make a declaration that such person had ceased to be a printer, publisher, or proprietor of such newspaper, and did duly deliver the same to the said commissioners, or to such officer as aforesaid; or unless it shall be proved that, previous to such occasion as aforesaid, a new declaration of the same, or a similar nature respectively, or such as may be required by law, was duly signed and made, and delivered as aforesaid respecting the same newspaper, in which the person sought to be affected on such trial did not join; and the said commissioners, or the proper authorized officer, by whom any such declaration shall be kept, according to the directions of this act, shall, upon application in writing made to them or him respectively, by any person requiring a copy certified according to this act, of any such declaration as aforesaid, in order that the same may be produced in any civil or criminal proceeding, deliver such certified copy, or cause the same to be delivered to the person applying for the same, upon payment of the sum of one shilling and no more; and in all proceedings, and upon all occasions whatsoever, a copy of any such declaration, certified to be a true copy under the hand of one of the said commissioners or of any officer in whose possession the same shall be, upon proof made that such certificate hath been signed with the hand-writing of a person described in or by such certificate as such commissioner or officer, and whom it shall not be necessary to prove to be commissioner or officer, shall be received in evidence, against any and every person named in such declaration as a person making or signing the same, as a sufficient proof of such declaration, and that the same was duly signed and made, according to this act, and of the contents thereof; and every such copy so produced and certified, shall have the same effect, for the purposes of evidence, against any and every such person named therein as aforesaid, to all intents whatsoever, as if the original

laration, of which the copy so produced and certified shall purport to be a copy, had been produced in evidence, and been proved to have been duly signed and made by the person appearing by such copy to have signed and made the same as aforesaid; whenever a certified copy of any such declaration shall have been produced in evidence as aforesaid, against any person having signed and made such declaration, and a newspaper shall afterwards be produced in evidence, intituled in the same manner as the newspaper mentioned in such declaration is intituled, and wherein the name of the printer and publisher and the place of printing shall be the same as the name of the printer and publisher and the place of printing mentioned in such declaration, or shall purport to be the same, whether such title, name, and place stated upon such newspaper shall be set forth in the same form of words as is contained in the said declaration, or in any form of words varying therefrom; it shall not be necessary for the plain-informant, or prosecutor, in any action, prosecution, or other proceeding, to prove that the newspaper to which such action, prosecution, or other proceeding may relate, was purchased of the defendant, or at any house, shop, or office belonging to or occupied by the defendant, or by his servants or workmen, or where he may usually carry on the business of printing or publishing such newspaper, or where the same may be usually sold: and if any person, not being one of the said commissioners, or the proper authorised officer, shall give any certificate purporting to be such certificate as aforesaid, or shall presume to certify any of the matters or things by this act directed to be certified by such commissioner or officer, or which such commissioner or officer is hereby empowered or entrusted to certify; if any such commissioner or officer shall knowingly and wilfully falsely certify under his hand, that any such declaration as required to be made by this act was duly signed and made before him, the same not having been so signed and made; or shall knowingly and wilfully falsely certify that any copy of any declaration is a true copy of the declaration of which the same is certified to be such copy, the same not being such true copy; every person so offending shall forfeit the sum of one hundred pounds.

6 & 7 W.
76.
After production of declaration and a newspaper entered as therein mentioned the purchase of the paper need not be proved.

Penalty for granting a certificate

9. [*Service of legal process against the printer, publisher, proprietor of any newspaper at the declared place of printing, shall be deemed good service.*]

10. [*A justice may summon any one to appear before himself or any other justice, to give evidence as to any offence against this act; and if he refuse to appear, according to the exigency of the summons, without having a reasonable excuse, or to give evidence, he shall forfeit ten pounds.*]

SECTION 5.

Offences relating to the Post Office.

Embezzle-
ment by offi-
cers of the
post office.

23 & 24 Geo. 3, c. 17 (a), s. 18.—That in case the post-master-general, or any person concerned in the execution of this act, shall neglect or refuse to perform any matter or thing whatsoever, according to the true intent and meaning of this act; or if they, or any of them, or any other officer employed by virtue of this act, shall embezzle, divert, or misapply any of the monies by them or any of them collected or received by virtue of this act, contrary to the tenor and true meaning thereof; then and in every such case, they and every of them so offending shall forfeit their several offices, and be incapable to serve his majesty, his heirs, or successors, in any office or place of trust or profit, and shall be liable, for every such offence, to pay treble the sum so embezzled, diverted, or misapplied.

Forging su-
perscription
to evade
postage.

28. That if any person or persons whatsoever within this kingdom, shall forge or counterfeit the seal or hand-writing, or make use of the name of any person whatsoever, in the superscription of any letter or packet to be sent by the post, in order to avoid the payment of the duty of postage; or shall forge, counterfeit, or alter, or shall procure to be forged, counterfeited, or altered, the date upon the superscription of any such letter or packet; or shall write, or cause to be written, and sent by the post, any letter or packet, the superscription or cover whereof shall be forged or counterfeited, or the date upon such superscription altered, in order to avoid the payment of the duty of postage, knowing the same to be forged, counterfeited, or altered; every person so offending shall, for the first offence, forfeit the sum of fifty pounds, and for the second offence, the sum of one hundred pounds, and for the third offence, shall be deemed guilty of felony, and shall be transported for seven years.

Opening or
embezzling
letters, after
delivery to
post office;
felony, death.

30. And whereas abuses may be committed by wilfully opening or embezzling of letters or packets, to the great discouragement of correspondence, trade, and commerce; for prevention whereof, be it enacted, that from and after the passing of this act, no person or persons within this kingdom shall wittingly, wilfully, or knowingly open, embezzle, or destroy, or cause, procure, or permit or suffer to be opened, embezzled, or destroyed, any letter or packet, after the same shall be delivered into the general or other post-office, or into the hands of any person or persons employed for the receiving or carrying post letters, and before delivery to the persons to whom directed, or for their use, except by an express warrant in writing, under the hand and seal of the lord lieutenant, or other chief governor or governors of this kingdom for the time being; or except in such cases where the party or parties to whom such letter or

(a) Entitled, "*An act for establishing a post office within this kingdom.*"

all be directed, or who is or are hereby chargeable with the payment of the postage thereof, shall refuse or neglect to pay the same; and except such letters or packets as shall be for want of true directions, and where the party to whom the same is or are directed cannot be found; and that any person offending herein, being thereof convicted in due law, shall be deemed guilty of felony without benefit of clergy.

23 & 24 G. 3,
c. 17.

That if any deputy, clerk, agent, letter-carrier, post-boy, or other officer whatsoever, employed or to be employed in any business relating to the post office, shall embezzle or apply to his, her, or their use, any money or value of him, her, or them received with any letter or letters, or packets to be forwarded by the post, or shall burn or destroy any letter or letters, packet or packets, by which or them so taken in or received to be forwarded by any such deputy, clerk, agent, letter-carrier, post-boy, officer, or other person so employed, or hereafter to be employed, shall advance the rate or rates of postage upon any letter or letters, packet or packets, sent by post, and shall not duly account for the money by him, her, or them so advanced for such advanced postage; every such offender, being convicted as aforesaid, shall be deemed guilty of felony, and shall suffer death as a felon.

Officers of
the post
office embezzling money
received
with any let-
ter, or de-
stroying any
letter; felony,
death.

23 & 24 Geo. 3, c. 13, s. 1. [*Recites 23 & 24 Geo. 3, c. 17, s. 31, that it was enacted, that no postmaster-general, secretary, receiver-general, accountant-general, resident sur-comptroller, or other officer should act in the business of the post office, until he had taken the oath there mentioned.*] Whereas in many instances justice might be eluded, and criminal prosecutions founded on the said recited act, and other act relative to the post office, proof should be made that such oath was duly taken by every or any of the persons aforesaid: be it therefore declared and enacted, that, on any criminal prosecution or trial to be hereafter had for any offence against the said act, or against this act, or any other act relating to the post office, it shall not be necessary or incumbent on any person or persons prosecuting on behalf of his majesty, or his successors, to prove or give in evidence on any prosecution or trial, that the said oath was taken by any of the persons aforesaid; but that it shall be presumed on every prosecution and trial, that the persons aforesaid, and every person who was and were duly appointed to their several and respective offices and employments, and took the said oath and respectively, and severally and respectively performed the requisites appointed by the said act, and by this act, and every other act relating to the post office to be done or performed, upon proof being first made that the person or persons charged with any offence against the said acts, or any of them, were at the time of the offence, and were employed in the station, employment, or business relating

On criminal
prosecutions,
officers pre-
sumed to
have been
regularly ap-
pointed, if
proved to
have acted in
the office.

21 G. 3, c. 13. to the post office, which shall be charged, mentioned, or set forth in any indictment for such offence.

In prosecutions, to be admitted that post-office has been established, and certain officers duly appointed, &c.


2. And in order to obviate doubts, and to prevent trouble and the expense in prosecutions and suits for offences against the post office laws; be it enacted, that in all and every criminal prosecution and trial for offences done or committed, or to be done or committed against the said act, [23 & 24 Geo. 3, c. 17,] or any other act relating to the post office, and in all proceedings at law or in equity founded upon the said acts, or any of them, the establishment of the said post office shall not be questioned, but it shall be admitted and taken as proved that one general letter office and post office has been, and at the time of the offence committed, was duly established for the purposes in the said act mentioned; and that a sufficient person or persons has or have been appointed master of the said office by his majesty, his heirs and successors, and duly made and constituted master of the said office by letters patent *under the great seal of Ireland*, by the name, style, and title of his majesty's postmaster-general of Ireland; and that a secretary, a treasurer, a receiver-general, and accountant-general, and a resident surveyor of the said general post office, and also a comptroller of the sorting office thereof have been respectively in like manner duly appointed, made, and constituted by letters patent under the great seal of Ireland; and that all and every of the subordinate officers, deputies, servants, and agents required by the said act, have been duly appointed; and that due and regular posts and inferior post offices have been settled and established for the purposes in the said act; and that it shall not be necessary, in any such prosecution or trial or proceeding, to prove or produce or give in evidence the letters patent of the said master, or of any of the other officers aforesaid, or any deputation or appointment made, given, or granted by the master of the said office for the time being, to any of the subordinate officers, deputies, servants, or agents of such master of the said office, but that the said recited act of the twenty-third and twenty-fourth years of the reign of his present majesty, shall, in all such prosecutions, trials, and proceedings, be deemed and taken to be, and shall be received as evidence of every such appointment and deputation as aforesaid (a).

Aiding in the offences mentioned in the 23 & 24 Geo. 3, c. 17, s. 30; felony, death.
† Sic.

38 Geo. 3, c. 47 (b), s. 1.—[Recites 23 & 24 Geo. 3, c. 17, s. 30, *ante* 246.] That if any person or persons, after the passing of this act, shall be aiding or assisting or assisting† in or to the committing of any of the offences in the said part of the said recited act contained, every such person so aiding or assisting in,

(a) See the act, *Will. 4, c. 8*, by which his majesty is authorized to appoint one postmaster-general for the United Kingdom.

(b) Entitled, "*An act for the further amendment of the acts relating to the post office, and for further facilitating prosecutions under the said acts.*"

to the committing of any of the said offences, being thereof 38 G. 3, c. 47.
 convicted by due course of law, shall be deemed guilty of 
 felony, and shall suffer death as a felon, without benefit of
 clergy.

2. That if any deputy, clerk, agent, letter-carrier, post-boy Stealing let-
 ters &c. from
 any mail bag,
 or post office;
 or receiving
 such when
 stolen;
 felony, death.
 rider, officer or other person employed or to be hereafter
 employed in any business relating to the post office, or if any
 other person or persons whatsoever, not employed in any
 business relating to the post office, shall rob (or wilfully stop
 or detain with intent to rob, search, or impede the progress
 thereof) any mail or mails, bag or bags, in which letters are sent
 or conveyed by the post, or shall steal or feloniously take from
 out of any such mail, or from or out of any bag or bags of
 letters sent or conveyed by the post, or from any post-boy, post
 rider, or letter-carrier, employed or to be employed in any
 business relating to the post office, or from or out of any post
 office, or house or place for the receipt or delivery of letters
 and packets, sent or to be sent by the post; or from or out of
 any coach, cart, or other conveyance, by which letters are sent
 or shall be sent by the post, any letter or letters, packet or
 packets, bag or mail of letters; although such robbery, stealing,
 or taking, shall not appear or be proved to be a taking from the
 person, or upon the king's highway, or to be a robbery com-
 mitted in any dwelling-house, or any coach-house, stable, barn,
 or any out-house belonging to a dwelling-house, and although
 it should not appear to be proved that any person or persons were
 put in fear by such robbery, stealing, or taking; or if any person or
 persons shall be aiding or assisting in the committing of any of
 the said offences; or if any person shall receive any such mail,
 or bag of letters, or any letter or packet, or any other article,
 matter, or thing therein contained, or which shall have been
 feloniously taken out therefrom, or which shall have been other-
 wise feloniously taken as aforesaid, knowing the same to have
 been stolen or feloniously taken as aforesaid; every such
 offender, being thereof convicted as aforesaid, shall be deemed
 guilty of felony, and shall suffer death as a felon without benefit
 of clergy.

3. That if any officer or other person whatsoever, in any Secreting or
 destroying
 letters sent
 by post and
 containing
 money or
 certain valu-
 able secu-
 rities, or tak-
 ing such mo-
 ney, &c.
 from such let-
 ters, or re-
 ceiving &c.;
 felony,
 death.
 wise acting under or by virtue of this act, or under or by
 virtue of any other act passed or to be passed in this kingdom
 relative to the post-office, or any deputy, clerk, agent, letter-
 carrier, post-boy or rider, or any other officer or person em-
 ployed or to be hereafter employed in receiving, stamping,
 sorting, charging, carrying, conveying, or delivering letters or
 packets, or in any other business relating to the post-office, shall
 wilfully secrete, embezzle, or destroy, or shall wilfully permit
 or suffer any other person or persons wilfully to secrete, embez-
 zle, or destroy; or if any other person or persons shall, with
 or without the consent of any such clerk, deputy, agent, letter-
 carrier, post-boy or rider, or other officer or person whatsoever,

Offences relating to the Post Office. [P. II.]

47. employed as aforesaid, wilfully secrete, embezzle, or destroy any letter or letters, packet or packets, bag or mail of letters, which shall have been sent by the post, or with which any such deputy, clerk, agent, letter-carrier, post-boy or rider, or other officer or person to be employed as aforesaid, shall and may be respectively entrusted, or which shall have come to his, her, or their hands or possession, which shall contain any bank-note, bank-post-bill, bill of exchange, treasury or exchequer bill, debenture, or acquittance, South Sea, East India, or city of Dublin bond, dividend-warrant of the bank of Ireland or England, South Sea, East India, or other company, society, or corporation, navy, or victualling, or transport bill, ordnance-debenture, seamen's ticket, Irish or British state lottery-ticket, or share of any such ticket, bank, treasury, or other receipt for payment of any publick loan, note of assignment of stock in the Irish or British funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds of Ireland or Great Britain, or belonging to any company, society, or corporation, goldsmith or banker's letter of credit or note for or relating to the payment of money, or bond or warrant of attorney, draft, bill, or promissory note, or other security or securities, or paper, voucher, or thing whatsoever, for the payment of money, or whereby or whereon any sum of money may be had, gotten, received, or recovered, or which shall contain any part of the said several vouchers, securities, papers, matters or things herein before mentioned, or of any of them; or shall steal, or feloniously take out of any letter or packet that shall come to his, her, or their hands or possession, or which shall have been sent by the post, any of the vouchers, securities, papers, matters, or things herein before mentioned, or any part of them or of any of them, or any other security or securities, or matter, or paper, or thing whatsoever, or any part of them or of any of them, for the payment of money, whereby or whereon any sum of money may be had, gotten, received, or recovered; or shall steal, or feloniously take out of any letter or packet that shall come to his, her, or their hands or possession, or which shall have been sent by the post, any part of any of the vouchers, securities, papers, matters, or things herein before mentioned, or any part of any other security or securities, papers, matter, or thing whatsoever, for the payment of money, whether money can be had, gotten, received, or recovered thereby or thereon, or not; or if any person or persons shall be aiding or assisting in the committing of any of the said offences; or if any person or persons shall receive any such letter or letters, packet or packets, bag or mail of letters, so as aforesaid secreted or embezzled, or any of the vouchers, securities, papers, matters, or things herein before mentioned, contained in such letter or letters, packet or packets, bag or mail of letters, or any part of them or of any of them, knowing the same to have been wilfully secreted or embezzled

as aforesaid; or if any person or persons shall receive any of ^{38 G. 3, c. 47.}
the vouchers, securities, or papers, or any part of them, or any
matter, article, article† or thing, which shall have been feloniously ^{† Stc.}
taken out of any letter or letters, packet or packets, bag
or mail of letters, knowing the same to have been stolen or
feloniously taken as aforesaid; every such offender or offenders,
being thereof convicted by due course of law, shall be deemed
guilty of felony, and shall suffer death as a felon, without
benefit of clergy.

4. [and 36 Geo. 3, c. 7, s. 2.]—That every person so receiving any such letter or letters, packet or packets, bag or mail of letters, so wilfully and feloniously secreted or embezzled as aforesaid, or any matter, article, or thing therein contained, or which shall have been feloniously taken therefrom or thereout, knowing the same to have been secreted or embezzled or stolen, or feloniously taken as aforesaid, shall be deemed and taken to be a principal felon, and shall be triable for such offence; and being convicted thereof in due course of law, shall suffer death as a felon *without benefit of clergy*, although the person or persons who shall have actually secreted or embezzled such letter or letters, packet or packets, bag or mail of letters, or who shall have feloniously taken any of the articles, matters, or things aforesaid therefrom or thereout, shall not have been previously convicted, tried, or apprehended.

Receivers may be tried and convicted, although the principal felons may not have been amenable.

5. That on every trial to be hereafter had for any offence against this act, or the said recited act of the [23 & 24 Geo. 3, c. 17,] or against an act passed in the [28 Geo. 3, c. 13,] or against an act passed in the [36 Geo. 3, c. 7,] where evidence of any bank note, bank post bill, promissory note, bill of exchange, or any other of the vouchers or securities hereinbefore mentioned, or any part of them or of any of them, or any other security or securities, matter, paper, or thing whatsoever, or any part of them or of any of them, for the payment of money, or whereby or whereon any sum of money may be had, gotten, received, or recovered, shall be necessary; it shall not be necessary to produce the person or persons by whom such bank note, bank post bill, promissory note, bill of exchange, or other voucher, security, paper, matter, or thing shall have been signed; but it shall be sufficient to give such other legal evidence of the making and execution of such bank note, bank post bill, promissory note, bill of exchange or other voucher, security, paper, matter or thing, as the nature of the case will admit of, either by the similitude of the hand-writing of the person or persons subscribing such bank note, bank post bill, promissory note, bill of exchange or other voucher, security, paper, matter or thing, or by such other means as should be legal evidence in civil actions, for the mere proving of the making and execution of such bank note, bank post bill, promissory note, bill of exchange or other voucher, security, paper, matter or thing whatsoever.

On trials for offences against this act, or 23 & 24 G. 3, c. 17; 28 G. 3, c. 13 or 36 G. 3, c. 7; the signers of valuable securities need not be produced.

5 & 6 Will. 4, c. 81 (a).—Whereas by an act made and passed

(a) Entitled, "An act for abolishing capital punishments in cases of letter stealing and sacrilege."

in the parliament of Ireland in [56 Geo. 3, c. 7] and by an act made and passed in [52 Geo. 3, c. 143] it is amongst other things enacted, that if any person whatsoever, employed by or under the post office of Great Britain, receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the said office, shall secrete, embezzle, or destroy any letter or packet, or bag or mail of letters, with which he or she shall have been entrusted in consequence of such employment, or which shall in any other manner have come to his or her hands or possession whilst so employed, containing the whole or any part or parts of any bank note, bank post bill, bill of exchange, exchequer bill, South Sea or East India bond, dividend warrant, either of the bank, South Sea, East India, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman's ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, American provincial bill of credit, goldsmith's or banker's letter of credit or note for or relating to the payment of money, or other bond or warrant, draft, bill, or promissory note whatsoever for the payment of money; or shall steal and take out of any letter or packet with which he or she shall have been so entrusted, or which shall have come to his or her hands or possession, the whole or any part or parts of any such bank note, bank post bill, bill of exchange, exchequer bill, South Sea or East India bond, dividend warrant, either of the bank, South Sea, East India, or other company, society, or corporation, naval or victualling or transport bill, ordnance debenture, seaman's ticket, state lottery ticket or certificate, bank receipt for payment of any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stocks in the funds belonging to any company, society, or corporation, American provincial bill of credit, goldsmith's or banker's letter of credit or note for or relating to the payment of money, or other bond or warrant, draft, bill, or promissory note whatsoever, for the payment of money; every person so offending, being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy: And whereas in and by the said recited act it is further enacted, that if any person shall steal and take from any carriage, or from the possession of any person employed to convey letters sent by the post of Great Britain, or from or out of any post office, or house or place for the receipt or delivery of letters or packets, or bags or mails of letters, sent or to be sent by such post, any letter or packet, or bag or mail of letters, sent or to be sent by such post, or shall steal and take any letter or packet out of any such bag or mail; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy: And whereas in and by the said recited act it is further enacted, that if any person shall counsel, command, hire, persuade, procure, aid, or abet any such deputy,

clerk, agent, letter carrier, postboy, or rider, or any officer or person whatsoever employed by or under the said office, in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the said office, to commit any of the offences in the said recited act and hereinbefore mentioned, or shall with a fraudulent intention, buy or receive the whole or any part or parts of any such security or instrument, as in the said recited act and hereinbefore described, which shall have been contained in, and which at the time of buying or receiving thereof, he or she shall know to have been contained in any such letter or packet, so secreted, embezzled, stolen, or taken by any deputy, clerk, agent, letter carrier, postboy, or rider, or any other officer or person so employed as aforesaid, or which such person so buying or receiving as aforesaid shall, at the time of buying or receiving thereof, know to have been contained in and stolen and taken out of any letter or packet stolen and taken from or out of any mail or bag of letters sent and conveyed by such post, or from or out of any post office, or house or place for the receipt or delivery of letters or packets, or bags or mails of letters, sent or to be sent by such post; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy, and should and might be tried, convicted, and attainted of such felony, as well before or after the trial and conviction of the principal felon, and whether the said principal felon should have been apprehended, or should be amenable to justice or not: And whereas by an act [7 & 8 Geo. 4. c. 29. *Eng.*; and 9 Geo. 4, c. 55, *note* 32.] And whereas [*reciting the expediency of mitigating the punishment.*] Be it &c., that so much of each of the said acts as inflicts the punishment of death upon persons convicted of any of the offences therein and hereinbefore specified, shall be, and the same is hereby repealed; and that from and after the passing of this act, every person convicted of any of the offences in the said act so specified, or of aiding or abetting, counselling or procuring the commission thereof, shall be liable to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding four years.

Punishment of death for letter stealing &c, repealed, and transportation substituted.

6 & 7 Will. 4, c. 4 (a). [*Recites* 5 & 6 Will. 4, c. 81, and the doubt whether offenders are liable to any punishment on account of a clerical error therein.] Be it &c., that the same act shall be read as if, instead of the words, "in the said act so specified," the words, "in the said acts so specified," had been inserted in the said act of the last session; and that all persons who may hereafter be duly convicted of any of the offences mentioned in the said act of the last session, shall and may be sentenced by the court or judge by or before whom such offenders may be tried, to transportation for life or for

Amendment of 5 & 6 W. 4, c. 81.

6 & 7 W. 4, c.
4.

Persons pay-
ing certain
rates of post-
age, may for-
ward letters
abroad by
other than
packet boats.

any term of years not less than seven, or to be imprisoned for any term not exceeding three years, with or without hard labour, and for any period of solitary confinement during such imprisonment, at the discretion of such court or judge.

55 Geo. 3, c. 103 (a), s. 3.—That it shall and may be lawful for his majesty's *said* postmasters-general of *Ireland*, and their deputies, to receive letters and packets directed to places within his majesty's dominions (other than Great Britain), or to kingdoms and countries beyond the seas, from any person or persons who may bring the same to any post office in Ireland, and who may be desirous to forward such letters themselves, and to affix upon each letter and packet such stamp, mark of postage or designation, as the said postmasters-general in their discretion shall think proper and order; and thereupon to demand and receive for the use of his majesty, his heirs and successors, a rate of postage of one third part of the rates and duties payable by law for such respective letters and packets, if the same were conveyed by packet boats; and in cases where no rate of postage is already established, then to demand, have, receive, and take for such letters and packets, rates as near as can be ascertained, equal to one-third part of what is now paid for letters sent beyond the seas, and, upon payment thereof, to return such letters and packets to the person or persons bringing the same; and that it shall and may be lawful for such person and persons to forward such letters and packets to the places to which they may be directed, by any ships or vessels that he or they may think proper, not being packet boats, without incurring any penalty therefore, and without payment of any other rate or duty of postage; any law, statute, custom, or usage to the contrary notwithstanding.

Forging post
office mark;
misdemeanor.

14. That if any person shall forge or counterfeit, or cause to be forged or counterfeited any stamp, mark of postage, or designation, upon any letter or packet hereby authorized to be so stamped, marked, or designated, with intent to avoid or prevent the payment of the rate of postage hereby imposed; each and every person and persons so offending shall be deemed and taken to be guilty of a misdemeanor, to be punished by fine and imprisonment.

Persons em-
ployed in the
post office,
embezzling
any votes, &c.
in parliament,
or newspa-
pers; misde-
meanor.

5 Geo. 4, c. 20, s. 10.—And whereas serious loss, inconvenience, and injury may be sustained by the wilful embezzling or purloining of printed votes or proceedings in parliament, and printed newspapers, sent or to be sent by the post within the united kingdom of Great Britain and Ireland; be it further enacted, that from and after the passing of this act, if any deputy, clerk, agent, letter-carrier, letter-sorter, post-boy or rider, or any other officer or person whatsoever, employed or hereafter to be employed in receiving, stamping, sorting, charging, conveying or delivering letters or packets, or in any other business relating to the post office in the said united kingdom, shall wilfully purloin, embezzle, secrete, or destroy, or shall

(a) Entitled, "An act to regulate the postage of ship letters to and from Ireland."

willfully permit or suffer any other person or persons to purloin, 55 G. 3, c. 103.
 embezzle, secrete, or destroy any printed votes or proceedings
 in parliament, or printed newspapers, or any other printed paper
 whatsoever, sent or to be sent by the post without covers, or in
 covers open at the sides; each and every such person or persons
 so offending, shall be deemed and taken to be guilty of a mis-
 demeanor, and be punished by fine and imprisonment; and such
 offences shall and may be inquired of, tried, and determined,
 either in the county where the offence shall be committed, or
 where the party shall or may be apprehended.

2 *Will. 4, c. 15 (a), s. 11.*—That every person who shall **Stealing**
 steal or unlawfully take away any bag or mail of letters, sent **mail-bags or**
 or to be sent by any ship or vessel so to be employed for the **letters, sent**
 conveyance of mails of letters and packets as last aforesaid (b), **by ships (not**
 or shall steal or unlawfully take any letter or packet out of any **packets); fe-**
 such bag or mail, or shall unlawfully open any such bag or **lony, trans-**
 mail, shall, upon being convicted thereof, be adjudged guilty of **portation.**
 felony, and shall be liable, at the discretion of the court, to be
 transported beyond the seas for any term not exceeding four-
 teen years nor less than seven years, or to be imprisoned for
 any term not exceeding three years; and when any such felony
 shall be committed within the jurisdiction of the Admiralty of
 England, the same shall be dealt with, inquired of, tried, and
 determined in the same manner as any other felony committed
 within that jurisdiction.

23. Provided always, and be it further enacted, that no letter **Regulations**
 or packet whatsoever, sent by any public officer to whom the **to be ob-**
 privilege of franking is granted by this act (c), shall be exempt **served by**
 public offi-

(a) Entitled, "*An act to enable his majesty's postmaster-general to extend the accommodation by post; and to regulate the privilege of franking in Ireland; and for other purposes relating to the post office.*"

(b) The postmaster-general or his deputy may contract for the conveyance of mails by any British ships, to or from any port whatsoever; and may demand for such conveyance, the same rates of postage as if the letters had been conveyed by regular packet ships—*s. 10.*

(c) By *s. 20*, the privilege of sending and receiving letters free of postage, which had been enjoyed by certain public officers and institutions, is abolished. That privilege, as to all parts of the united kingdom, is conceded to the lord lieutenant, his chief, under, and private secretaries, (*s. 21*,) and, with certain restrictions, to one person in the office of the lord lieutenant's chief secretary in London, and appointed by him—*ss. 24 & 28*. As to all places within Ireland, it is conceded to the lord chancellor, and the surveyors of the post-office for the time being (*s. 22*), and, under certain restrictions, to one person appointed by each of the following public officers in Ireland, viz. the commander-in-chief, the vice-treasurer, the deputy adjutant-general, the deputy quartermaster-general, and the chief officer of ordnance; to one person in the general post office in Ireland appointed by the postmaster-general, and to two persons appointed by the chief secretary, one in the civil, and the other in the military department of his office—*ss. 25 & 26*.

2 W. 4, c. 15. from the payment of postage, unless the whole superscription upon every such letter or packet so sent shall be of the hand-writing of the officer or person sending the same, and shall have indorsed thereon the name of such officer, together with the name of the post town from which the same is intended to be sent, and the day, month, and year upon which the same shall be to be put into the post office, the day of the month to be in words at length; and also, unless every such letter or packet shall be put into the general post office or other post office, or into any receiving-house or place appointed by his majesty's postmaster-general for the receipt of letters and packets, to be forwarded by the post on the day of the date put upon such letter or packet; and unless the officer, whose name shall be indorsed thereon, shall actually be in the post town, into the post office of which every such letter or packet shall be put, or within twenty miles of such post town, on the day, or on the day before the day, on which such letter or packet shall be put into the post office.

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 cers enjoy-
 ing the pri-
 vilege of
 franking.

Forging
 superscrip-
 tion to evade
 postage,
 felony.

30. That if any person whatsoever shall forge or counterfeit the hand-writing of any person whomsoever hereby authorised to frank any letters or packets, in the superscription of any letter or packet to be sent by the post, in order to avoid the payment of the duty of postage; or shall forge, counterfeit, or alter, or shall procure to be forged, counterfeited, or altered, the date of the superscription of any such letter or packet; or shall write or send by the post, or cause to be written or sent by the post, any letter or packet, the superscription or cover whereof shall be forged or counterfeited, or the date upon such superscription or cover altered, in order to avoid the payment of the duty of postage, knowing the same to be forged, counterfeited, or altered; every person so offending, and being thereof convicted in due form of law, shall be deemed guilty of felony, and shall be transported beyond the seas, for seven years.

Secreting
 mails, which
 have been
 lost or
 stolen; mis-
 demeanor.

36. And whereas it frequently happens that bags or mails, sent and conveyed by the post, which may have been stolen or accidentally lost, and afterwards found or picked up, are wilfully detained by the persons finding the same, in the expectation of gain or reward, to the great inconvenience of divers of his majesty's subjects, and the prejudice of commerce: to remedy therefore the said evil, be it further enacted, that from and after the passing of this act, if any person or persons in Ireland shall wilfully secrete, keep, or detain, or, being required to deliver up by any deputy, clerk, agent, letter-carrier, post-boy, rider, driver, or guard of any mail-coach, or any other officer or person whatsoever employed or to be employed in any business relating to the post-office, shall refuse or wilfully neglect to deliver up any mail or bag of letters sent or conveyed, or made up in order to be sent or conveyed by the post, or any letter or letters, packet or packets sent or conveyed by the post, or put for that purpose into any

post-office, or house or place for the receipt or delivery of letters or packets sent or to be sent by the post, and which letter or letters, packet or packets, bag or mail of letters shall have been found or picked up by the same or any other person or persons, or shall, by or through accident or mistake, have been left with or at the house of the same or any other person or persons; such and every person and persons so offending, shall be deemed and taken to be guilty of a misdemeanor, to be punished by fine and imprisonment. 2 W. 4, c. 15.

6 & 7 Will. 4, c. 54. (a), s. 19.—And in order to prevent frauds on the revenue of the post office, be it further enacted, that if any person shall enclose or conceal, or cause or procure to be enclosed or concealed, in any newspaper sent or to be sent by the post, any letter, paper, or thing; or shall print or cause to be printed, any words or communication upon any such newspaper, after the same shall have been published, or upon the cover thereof; or put or place, or cause to be put or placed any writing or marks upon any such newspaper, or the cover thereof, other than the name and address of the person to whom it is sent; or shall knowingly send or cause to be sent by the post, or tender or deliver in order to be sent by the post, any newspaper, having enclosed or concealed therein any letter, paper, or thing, or having any words or communication printed on such paper after the same was published, or on the cover thereof, or having any writing or marks upon such newspaper or the cover thereof, other than the name and address of the person to whom it is sent; every person so offending shall forfeit and pay to his majesty, his heirs, and successors, such a sum of money as will be equal to treble the duty of letter postage, which, according to the rates established by law for the conveyance of letters by the post, would have been payable on such newspaper or packet, in case the same had been a letter sent by the post; which treble duty shall be recovered and recoverable with costs, in the same manner as any sums due for postage not exceeding twenty pounds are hereinafter (b) directed to be recovered; or such persons shall, at the option of the postmaster-general, be prosecuted for a misdemeanor.

Senders of newspapers liable to treble postage, or to be prosecuted for misdemeanor, on attempting to evade the duty.

25. That wherever the term "postmaster-general" occurs in this act, the same shall be construed to mean and include the postmaster-general for the time being.

Explanation of terms.

And that, wherever in this act, with reference to any person, matter, or thing, any word or words is or are used, importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies corporate or politic as well as individuals, and several matters or things as

(a) Entitled, "*An act to consolidate and amend the laws relating to the conveyance of newspapers by the post.*"

(b) *Viz. By distress or otherwise, as provided by the act 5 & 6 Will. 4, c. 25.*

well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

SECTION 6.

Offences relating to the Payment of the Army, Navy, and Ordnance.

47 Geo. 3, sess. 2, c. 25, s. 1. [*Recites the 46 Geo. 3, c. 69, and the convenience of having army pensions paid to the persons entitled to them, at or near their residences; and enacts, that after the 24th of December, 1807, the secretary at war and paymaster-general for the time being, may direct all pay, pensions, and allowances, to which any officer in any of his majesty's forces, or the widow of such officers, or any person on the compassionate list, shall be entitled, shall be paid the same at or near their respective places of residence, under such rules and regulations as may from time to time be established at Chelsea Hospital, by virtue of the said act; or under such other regulations, as may be established by the secretary at war and paymaster-general for the time being.*]

Personation
of persons
entitled to
pay; felony.

7. That from and after the passing of this act, if any person shall wilfully and knowingly personate, or falsely assume the name or character of, or procure any other person to personate, or falsely to assume the name or character of any other person entitled, or supposed to be entitled to any such pay, pension, allowance, or relief as aforesaid, in order to receive the same or any part thereof; every such person so offending, and being lawfully convicted thereof, shall be deemed guilty of felony, and may be transported for such period, not exceeding fourteen years, as the court shall adjudge.

Forging the
hand-writing
of persons
entitled to
pay; felony.

8. That if any person shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in forging and counterfeiting the name or handwriting of any person entitled to any such pay, pension, allowance, or relief or of any person or persons required by any rules or regulations made under and by virtue of this act to sign any certificate, voucher, or receipt, in relation to the payment of any such pay, pension, allowance, or relief, for and in order to the receiving or obtaining any money on any such pension, allowance, or relief, or shall utter any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whatsoever; every such person, so offending, being thereof lawfully convicted, shall be, and is hereby declared and adjudged to be guilty of felony, and may be transported for such period, not exceeding fourteen years, as the court shall adjudge.

Justices may
inquire into
the truth of
the certi-
cate.

9. That it shall be lawful for any justice of the peace or magistrate, or any receiver-general of the land-tax, collector of the cess in Scotland, collector of the customs, or collector of excise, to inquire into the truth of any certificate or voucher required by any such rules or regulations, and produced to him by

Any person claiming any such pay, pension, allowance, or relief, under any such certificate or voucher, or any person acting for him, by the oath or affirmation of the person producing the same, which oath or affirmation, any such justice of the peace or magistrate, or receiver-general, or collector aforesaid, is hereby authorised and required to administer; and, upon being satisfied of the truth of such certificate or voucher, to testify the same on the back of such certificate or voucher; and every person who shall, in any such oath or affirmation, wilfully and corruptly swear or affirm any matter or thing which shall be false or untrue, every such person so offending, and being thereof lawfully convicted, shall be, and is hereby declared to be subject and liable to the like pains and penalties, as any person convicted of perjury is, by any law now in force, subject and liable to.

47 G. 3, s. 2,
c. 25.

False swearing;
perjury.


7 Geo. 4, c. 16 (a), s. 25.—That if any person shall, by the sending or production of any false certificate, or any altered certificate or discharge, instructions or other document, knowing the same to have been fraudulently altered, or, by making any false representation, obtain or endeavour to obtain for himself or any other person, from the commissioners of the said hospital at Chelsea, any pension or increase of pension, or other allowance of money, or any inrolment, or other privilege or advantage; such person or persons shall, upon conviction of such offence, be deemed guilty of a misdemeanor, and punished accordingly, and shall for ever forfeit all claim and title whatsoever to pension or inrolment on account of service, wounds, or disability.

Obtaining
pension &c.
by false cer-
tificate.

35. (*pars.*) That in all indictments, informations, prosecutions, or other proceedings against any person or persons, for personating or falsely assuming the name or character of, or causing or procuring any other to personate or falsely assume the name or character of any person entitled, or supposed to be entitled to wages, pay, prize-money, or pension, or other allowance of money, for service done or supposed to be done in his majesty's army, or in any other service entitling or supposed to entitle any person to pay, prize-money, pension, or allowance, or the executor, administrator, wife, relation, or creditor of any such person, in order to receive, obtain, or claim wages, pay, or other allowance of money, pension, or prize money, due or supposed to be due; or for forging, counterfeiting, or altering, or causing or procuring to be forged, counterfeited, or altered, or aiding or assisting in forging, counterfeiting, or altering, or uttering or publishing as true, or causing or procuring to be uttered or published as true, or aiding or assisting in uttering or publishing as true, knowing the same to be false and counterfeited, any letter of attorney, bill, ticket, order, certificate, assignment, last will, or power of

How offences to be
charged in in-
dictments.

(a) Entitled, "*An act to consolidate and amend several acts relating to the royal hospitals for soldiers at Chelsea and Kilmainham.*"

7 G. 4, c. 16.  attorney, or other power or authority whatsoever, in order to receive, obtain, or claim wages, pay, allowances of money, pension money, or prize-money, due or supposed to be due to any such officer or soldier or other person; or for knowingly or willingly taking a false oath, or causing or procuring any other to take a false oath, to obtain probate of any will, or to obtain letters of administration in order to receive, obtain, or claim wages, pay, prize-money, or pension money, due or supposed to be due to any such officer or soldier, or other person, or for any fraud, misbehaviour, or other offence to which such form is applicable; it shall be sufficient to charge the same as being done with intent to defraud the lords and others, commissioners of the royal hospital for soldiers at Chelsea, in the county of Middlesex.

Personation
of pension-
ers ;

38. That if any person shall willingly and knowingly personate, or falsely assume the name or character, or procure any other to personate, or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person, entitled or supposed to be entitled to any pension, wages, pay, grant, or other allowance of money, prize money, or relief, due or payable, or supposed to be due or payable, for or on account of any service done or supposed to be done by any such officer, non-commissioned officer, soldier, or other person as aforesaid, in his majesty's army or other military service; or shall personate, or falsely assume the name or character of the executor or administrator, wife, relation, or creditor of any such officer, non-commissioned officer, or soldier, or other person as aforesaid, in order fraudulently to receive any pension, wages, pay, grant, or other allowance of money, prize-money, or relief, due or payable, or supposed to be due or payable, for or on account of any services done or supposed to be done by any such officer, non-commissioned officer, soldier or other person as aforesaid; or if any person shall forge, or counterfeit, or alter, or cause or procure to be forged, or counterfeited, or altered, or knowingly and willingly act, aid, or assist in forging, counterfeiting, or altering the name or hand-writing of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any pension, wages, pay, grant, allowance of money, prize-money, or relief, due or payable, or supposed to be due or payable, for or on account of any such service or supposed service as aforesaid, or the name or hand-writing of any officer, under officer, clerk, or servant of the said commissioners of the said hospital at Chelsea, or of any officer or person in any way concerned in the paying or ordering, directing or causing the payment of the said pensions, wages, pay, money, allowance of money, prize-money, or relief, or any of them; or shall forge, counterfeit, or alter, or cause or procure to be forged, counterfeited, or altered, or knowingly and willingly act, aid, or assist in forging, counterfeiting, or altering any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, docu-

Forging
documents,
or know-
ingly utter-
ing such ;
felony.

, or authority whatsoever, relating to, or any wise con- 7 G. 4, c. 16.
 ng the payment, or obtaining or claiming any pension,
 3, pay, grant, allowance of money, prize-money, or re-
 for and in order to the receiving, obtaining, or claiming
 such pension, wages, pay, grant, allowance of money,
 -money, or relief; or shall utter or publish as true, or
 ingly and willingly act, aid, or assist in uttering or pub-
 g as true, knowing the same to be forged, counterfeited,
 lered, any such letter of attorney, bill, ticket, order, cer-
 e, voucher, receipt, will, or any other power, instrument,
 nt, document, or authority whatsoever, with intent to
 1 the payment of any such pension, wages, pay, money
 owance of money, prize-money, or relief, from the said
 1ssioners of the said hospital at Chelsea, or from any
 ;, under-officer, clerk, or servant of the said commis-
 s, or from the person authorised or supposed to be autho-
 to pay the same, or with intent to defraud any person
 1ever, or any corporation whatsoever; every such person
 nding, being thereof lawfully convicted, shall be, and is
 y declared and adjudged to be guilty of felony, and shall
 ay be transported for life, or for such term of years as
 urt shall adjudge.

Will. 4, c. 53 (a), s. 49.—That if any person shall Personation
 ngly and willingly personate, or falsely assume the name of soldiers,
 racter, or procure any other person to personate, or falsely their wives,
 e the name or character of any officer, non-commissioned &c., in order
 , soldier, or other person entitled or supposed to be to obtain
 d to any prize-money, grant, bounty-money, share, or their pay,
 allowance of money due or payable, or supposed to be &c.;
 r payable for or on account of any service performed
 posed to have been performed by any officer, non-com-
 ned officer, soldier, or other person, who shall have really
 or be supposed to have served in his majesty's army or
 other military service; or shall personate or falsely assume,
 , aid, or assist, in personating or falsely assuming the
 or character, or procure any other person to personate
 ely assume the name or character of the executor or
 strator, wife, widow, next of kin, relation, or creditor of
 ch officer, non-commissioned officer, soldier, or other
 as aforesaid, in order to receive, or to enable any other
 to receive any prize-money, grant, bounty-money, share,
 r allowance of money due or payable, or supposed to
 or payable, for or on account of any service performed
 posed to have been performed by any such officer, non-
 ssioned officer, soldier, or other person as aforesaid; or

7 G. 4 c. 16.

Forging the
name of such
persons,
or of any
officer of
Chelsea Hos-
pital;

if any person shall forge, or counterfeit, or alter, or cause or procure to be forged, or counterfeited, or altered, or knowingly and willingly act, or aid, or assist in forging, or counterfeiting, or altering the name or hand-writing of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any prize-money, grant, bounty-money, share or other allowance of money, due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any officer, non-commissioned officer, soldier, or other person, who shall have really served or be supposed to have served in his majesty's army or other military service, or the name or hand-writing of any officer or under officer, clerk or servant of or in the employ of the commissioners of the said royal hospital at Chelsea, or the name or hand-writing of any officer or person in any way concerned in the paying, or the ordering, directing, or causing the payment of any such prize-money, grant, bounty-money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid; or shall falsely make, forge, counterfeit, or alter, or willingly act, aid, or assist in the false making, forging, counterfeiting, procuring, or altering any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever, relating to, or in any wise concerning the payment of, or the obtaining or claiming any such prize-money, grant, bounty-money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, in order to receive, obtain, or claim any such prize-money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, or shall utter or publish as true, or knowingly and willingly act, or aid, or assist in uttering or publishing as true, any falsely made, or forged, or counterfeited, or altered letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever, with intention to receive, obtain, or claim, or to enable any other person to receive, obtain, or claim from the said commissioners of the said royal hospital, or from any officer, under officer, clerk, or servant of the said commissioners, or from any person whatsoever, authorized or supposed to be authorized to pay the same, the payment of any such prize money, grant, bounty-money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, with intention to defraud any person or persons whatsoever, or any body or bodies politic or corporate whatsoever; or shall knowingly take a false oath, in order to obtain letters of administration or the probate of any will, in order to receive, obtain, or claim, or to enable any other person to receive, obtain, or claim any prize money, grant, bounty-money, share, or other allowance of money due or payable or supposed to be

Swearing
falsely, as
herein; fe-
lony.

due or payable for or on account or in respect of the service of any officer, non-commissioned officer, soldier, or other person as aforesaid, who shall have really served or be supposed to have served in his majesty's army or other military service, or shall demand or receive any prize money, grant, bounty money, share, or other allowance of money due or payable, or supposed to be due or payable as aforesaid, upon letters of administration or a probate of a will, knowing the will on which such probate shall have been obtained to be false, forged, or counterfeited, or knowing such letters of administration or the probate of such will as last aforesaid to have been obtained by means of any such false oath, with intention to defraud any person or persons whatsoever, or any body or bodies politic or corporate whatsoever; all and every person so offending, being thereof lawfully convicted, shall be and are and is hereby declared and adjudged to be guilty of felony, and shall be transported beyond the seas for life, or for any term not less than seven years, as the court before whom such person or persons shall be convicted shall adjudge.

2 W. 4, c. 53.

2 & 3 Will. 4, c. 106, s. 3.—That if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly act or assist in the false making, forging, or counterfeiting of any such authority, or certificate, or bill of exchange^(a), or shall utter as true any such false, forged, or counterfeited authority, or certificate, or bill of exchange, knowing the same to be false, forged, or counterfeited, with intent to defraud any person or persons, body or bodies politic or corporate; every such person so offending shall be deemed guilty of felony, and

Forging
certificate to
obtain mili-
tary pay &c.;
felony.

(a) The act 2 & 3 Will. 4, c. 106, ss. 1, 2, and sched. authorizes "any officer or person who has served in any of his majesty's forces, or in any forces which have been or may be engaged in his majesty's service, and who shall be entitled to receive any halfpay, pension, or allowance; or any widow of any such officer; or any person who shall be entitled to receive any allowance or pension on the compassionate list, or any pension, allowance, or relief in respect of any military service; or any person who shall be entitled to any retired or superannuation allowance, payable by the paymaster-general of his majesty's forces, by reason of his having served any civil office;" or "the executors or administrators of any such deceased officer or person, who at the time of his or her death was entitled to any such halfpay, pension, allowance, or relief," to draw a bill of exchange upon the paymaster-general, for the amount of such halfpay, and payable at three days' sight. Before drawing the bill, the desire to do so must be signified by letter to the paymaster-general, enclosing the usual affidavit or certificate, or both (if necessary), and other usual documents. Upon receipt of these, an order to draw the bill shall be dispatched from the office of the paymaster-general, to such officer or other person.

2 & 3 W. 4, being thereof lawfully convicted, shall be transported for seven years, or suffer imprisonment for any term not exceeding four years, as the court shall direct.

Licensed persons alone shall receive pay &c. under the orders of the persons entitled.

Proviso for orders to wives &c. to receive.

Personating relations, to receive pay &c., without being duly licensed.

59 Geo. 3, c. 56 (a), s. 2.—That it shall not be lawful for any person within the united kingdom to receive any wages, pay, prize money, or bounty money, or money in the nature of bounty money, due or to become due to any petty officer, seaman, non-commissioned officer of marines, or marine, supernumerary or boy, for or on account of his services respectively on board any of his majesty's ships, or in the capture of any fortress upon the land, or any arms, ammunition, stores of war, goods, merchandise, or treasure, on any conjunct expedition of sea and land forces, under any orders made or hereafter to be made by any petty officer or seaman, non-commissioned officer of marines or private marine, supernumerary or boy, other than persons who shall be duly licensed in the manner hereinafter mentioned for that purpose: provided always, that nothing herein contained shall extend, or be construed to extend to prevent any such petty officers, non-commissioned officers, seamen, or marines, supernumeraries or boys, from giving such orders to receive their wages, pay, prize-money, or bounty money, to their wives, or to the persons in the several degrees of relationship following; that is to say, parents, children, brothers, or sisters of such petty officers, seamen, marines, supernumeraries, or boys; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

3. That if any person who shall falsely represent himself or herself to be within any of the degrees of relationship in blood as before described, in order to enable himself or herself to receive any prize money or bounty money, or share of prize money or bounty money, due or to grow due for or on account of the services of any such petty officer, non-commissioned officer, seaman, or marine, supernumerary or boy, under any such order as aforesaid; or who, not being within any such degree of relationship, and not being licensed as aforesaid, shall receive any wages, pay, prize-money, bounty-money, or other allowances of money for the use of any such petty officer, non-commissioned officer, seaman, or marine, supernumerary or boy; or if any agent or person, whose license shall have been revoked as hereinafter mentioned, shall offer himself to receive, or shall receive any such wages, pay, prize-money, bounty-money, or other allowance of money, not being within any of the degrees of relationship aforesaid, and be thereof duly convicted, shall be deemed guilty of a misdemeanor, and punished accordingly.

(b) Entitled, "*An act to make further regulations as to the payment of navy prize orders.*"

12. That if any person or persons shall knowingly insert, 59 G. 3, c. 56.
 or cause to be inserted in any order for the payment of prize-
 money, bounty-money, grants, or other allowances of money,
 payable by the commissioners and governors of the royal hos- Inserting
false dates in
orders for
payment of
prize money,
&c.
 pital for seamen at Greenwich, or by their treasurer, any other
 date than the day on which the said order shall be executed,
 or shall knowingly present or utter any order bearing any false
 date as aforesaid; such person or persons shall, for every such
 offence, be deemed guilty of a misdemeanor, and punished
 accordingly.

17. That if any person or persons really entitled to prize Persons
really enti-
tled to prize
money, ob-
taining pay-
ment by false
certificates.
 or bounty-money, pension-money, grant or other allowance of
 money on account of services on board of any ship or vessel,
 shall, by the production of any false certificate, or by making
 any false representation, obtain or endeavour to obtain from
 the said royal hospital, or from any licensed agent, the said
 prize or bounty money, pension-money, or other allowance of
 money so due to him as aforesaid; such person or persons shall
 be deemed guilty of a misdemeanor, and shall forfeit all prize
 or bounty money, pension-money, grant or other allowance of
 money due to him, on account of his said services.

18. That if any person or persons shall willingly or know- Personating
persons
entitled to
pay, &c. ;
 ingly personate, or falsely assume, or cause, procure, aid, or
 assist any person to personate or falsely assume the name or
 character of any commissioned officer, warrant or petty officer,
 or† seamen, or any commissioned or non-commissioned officer of † Sic.
 marines, or marine, supernumerary or boy, or any other person
 entitled or supposed to be entitled to any wages, pay, prize
 money, bounty money, pension money, or other allowances of
 money, for or in respect of services performed or supposed to
 have been performed on board of any ship or vessel of his
 majesty, his heirs or successors; or shall personate or falsely
 assume the name or character, or shall assist in personating or
 falsely assuming the name or character of the wife, widow,
 executor or administrator, relation, or creditor of any such
 officer, seaman, or other person, in order to receive any wages,
 pay, prize money, bounty money, pension money, or other
 allowances of money due or supposed to be due for or in res-
 pect of the services of any such officer, seaman, marine, or
 other person as aforesaid, performed or supposed to have been
 performed on board of any ship or vessel of his majesty, his
 heirs or successors; or shall falsely make, forge, counterfeit, or Forging or-
ders, or utter-
ing &c., to re-
ceive wages,
&c.
 alter, or cause or procure to be falsely made, forged, counter-
 feited, or altered, or willingly act or assist in the false making,
 forging, counterfeiting, or altering any letter of attorney, order,
 bill, ticket, certificate of service, or other certificate whatsoever,
 assignment, last will, or other power or authority whatsoever,
 in order to receive, or to enable any other person to receive any
 wages, pay, prize money, bounty money, pension money, or
 other allowances of money due or supposed to be due for or in

59 G. 3, c. 56.

Swearing
falsely, to
obtain pro-
bate &c., or
receiving
money under
false probate
&c.; felony.

respect of the services of any such officer, seaman, marine, supernumerary or boy, or other person as aforesaid, performed or supposed to have been performed on board any ship or vessel of his majesty, his heirs or successors, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall utter or publish as true, or shall aid or assist in uttering or publishing as true, any false, forged, counterfeited, or altered letter of attorney, order, bill, ticket, certificate of service, or other certificate whatsoever, assignment, last will, or other power or authority whatsoever, knowing the same to be false, forged, counterfeited, or altered, in order to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, supernumerary or boy, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of his majesty, his heirs or successors, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall willingly and knowingly take a false oath to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive, or to enable any other person to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, supernumerary or boy, or other person as aforesaid, performed or supposed to have been performed on board of any of his majesty's ships or vessels, his heirs or successors, or shall demand or receive any wages, pay, prize money, bounty money, pension money or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board any of his majesty's ships or vessels, upon or by virtue of any probate of any will or letters of administration, knowing the will on which such probate shall have been obtained to be false, forged, and counterfeited, or knowing the probate of such will or such letters of administration as last aforesaid to have been obtained by means of any such false oath as aforesaid, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; then every such person or persons so offending, and being thereof convicted according to due course of law, shall be deemed guilty of felony, *and shall suffer death as a felon without benefit of clergy.*

Forging
tickets, &c.,
to obtain pay

11 Geo. 4, & 1 Will. 4, c. 20 (a), s. 83.—That if any person shall forge, or offer, utter, dispose of, or put off, knowing the same to be forged, any ticket, pay list, extract from any ship's

(a) Entitled, "*An act to amend and consolidate the laws relating to the pay of the Royal Navy.*"

or any certificate whatever authorized or required by this
any inspector's or other cheque, or any letter of attorney,
ment, power, or authority, in order to obtain, or to enable
her person to receive any wages, pay, half-pay, prize
, bounty money, or other allowance of money due or
ed to be due in respect of the services of any commission,
it, or petty officer, or seaman, or any commission or non-
issioned officer of marines, or marine, or any other person,
med or supposed to be performed in the royal navy ; or if
erson shall forge, or offer, utter, dispose of, or put off, any
's or other certificate to a bill of exchange, or any approval
y such bill, respectively required by this act ; or if any
shall forge, or offer, or utter, or put off, knowing the
to be forged, any receipt for wages payable under allot-
or otherwise in respect of the services of any person on
any of his majesty's ships, or shall forge the name or hand-
g of any officer of the royal navy or royal marines to any
t for half-pay or arrears of half-pay, or the name or hand-
g of any widow to any receipt for any pension or arrears
nsion, or the name or hand-writing of any person to any
t for an allowance from the compassionate fund of the
or shall offer, utter, dispose of, or put off, any forged receipt
lf-pay or arrears of half-pay, or for any widow's pension
ears of such pension, or for any allowance from the com-
nate fund, knowing any such receipt to be forged, with
in any of the said cases to defraud any person whomso-
every person so offending shall be deemed guilty of felony,
eing convicted thereof, shall be liable, at the discretion
court, to be transported beyond the seas for life or for any
not less than seven years, or to be imprisoned for any term
xceeding four years nor less than two years.

11 G 4 & 1 W.
4, c. 20.

for naval ser-
vice ; felony.

That if any person shall falsely and deceitfully personate
commission, warrant, or petty officer, or seaman, or com-
on or non-commissioned officer of marines, or marine, or
ife, widow, or relation, executor, administrator, or creditor
y such officer, seaman, or marine, or any person entitled
y allowance from the compassionate fund of the navy, in
to receive any wages, pay, half-pay, prize money, bounty
y, pension, or any part thereof, gratuity or other allowance
oney due or payable or supposed to be due or payable,
y such officer, seaman, or marine, or to the wife or widow,
on, executor, administrator, or creditor of any such de-
d officer, seaman, or marine, or any allowance to any
from the said compassionate fund, with intent to defraud
erson whomsoever ; every such offender shall be guilty of
, and being convicted thereof, shall be liable, at the
tion of the court, to be transported beyond the seas for
or for any term not less than seven years, or to be im-
ed for any term not exceeding four years nor less than
ears.

Personating
naval officer
&c., to obtain
pay ; felony.

11 G. 4. &
1 W. 4, c. 20.

Swearing
falsely to
obtain pro-
bate, or re-
ceiving pay
by means of
such pro-
bate; felony.

85. That if any person shall fraudulently and deceitfully take a false oath, in order to obtain probate of any will or letters of administration of the effects of any deceased commission, warrant, or petty officer, or seaman, or commission or non-commissioned officer of marines, or marine; or if any person shall fraudulently receive or demand any wages, pay, prize money, bounty money, pension, or any part thereof, or any allowance of money whatever, payable or supposed to be payable in respect of the services of any such officer, seaman, or marine, or from the compassionate fund of the navy, or any pension to the widow of an officer, upon or by virtue of any probate of a will or letters of administration, knowing such will to be forged, or such probate or letters of administration to have been obtained by means of a false oath, with intent in any of the said cases to defraud any person whomsoever; every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.

Subscribing
false petition
to the trea-
surer of the
navy, to
obtain certi-
ficate.

86. That if any person shall subscribe any false petition or application to the treasurer of his majesty's navy, or to the *paymaster of royal marines* (a), falsely and deceitfully representing herself or himself therein to be the widow, executor, nearest or one of the nearest of kindred of any deceased commission or warrant officer of the navy, or commission officer of marines, or of any petty officer or seaman, non-commissioned officer of marines, or marine; or shall utter or publish any such petition or application, knowing the same to be false, in order to procure, or to enable any other person to procure a certificate from the said inspector of seamen's wills, or from the *paymaster of royal marines* as hereinbefore *respectively* provided, thereby to obtain, or to enable any other person to obtain, without probate or letters of administration, payment of any wages, pay, halfpay, or pension, or any allowance from the compassionate fund of the navy, or payment of any wages, prize money, or allowances payable in respect of the services of any officer, seaman, or marine in the royal navy, or thereby to obtain, or to enable any other person to obtain probate of the will or letters of administration of the effects of any deceased petty officer, seaman, non-commissioned officer of marines, or marine; or if any person shall receive or demand any wages, pay, halfpay, prize money, bounty money, pension or arrears thereof, or any other allowance due or payable in respect of the services of any commission or warrant officer of the navy, or commission officer of royal marines, or of any petty officer, seaman, non-commissioned officer of marines, or marine, upon or by virtue of any certificate of the inspector of seamen's

Receiving
pay, &c. upon
such certi-
ficate; felony.

(a) So much of this act as relates to the paymaster of royal marines, has been repealed by the 2 Will. 4, c. 40, s. 35.

will or **paymaster of royal marines respectively** as aforesaid, knowing any such certificate to have been obtained by any false representation or pretence; every such offender shall be deemed guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years and not less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year.

11 G. 4, &
1 W. 4, c. 20.

87. That if any person shall forge, or shall utter, offer, or exhibit, knowing the same to be forged, any paper-writing purporting to be an extract from any register of marriage, baptism, or burial, or any certificate of marriage, baptism, or burial, in order to sustain any claim to any wages, prize money, or other monies due or payable in respect of the services of any officer, seaman, or marine in his majesty's navy, or to sustain any claim to any halfpay payable to an officer of the royal navy or marines, or to any pension as the widow of an officer, or to any payment or allowance from the compassionate fund of the navy, or to any gratuity or bounty of his majesty given to the relatives of persons slain in fight with the enemy; or if any person shall make any false affidavit, or utter or exhibit any false affidavit, certificate, or other voucher or document, in order fraudulently to procure any person to be admitted a pensioner as the widow of an officer of the royal navy, or in order to sustain any claim to any wages, prize money, or other monies, or to any halfpay or pension, or arrears thereof, or any allowance from the compassionate fund of the navy, or to any gratuity or bounty as aforesaid, with intent to defraud any person whomsoever; every person, in any of the said cases offending, shall be deemed guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years and not less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year.

Forging
certain
certificates,
vouchers,
&c., felony.

88. That in the case of every offence made felony by this act, every principal in the second degree, and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this act punishable: and every accessory after the fact to any such felony shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and that where any person shall be convicted of any offence punishable under this act, for which imprisonment shall or may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, as to the court in its discretion shall seem meet.

Accessaries.

89. That if any petty officer or seaman, non-commissioned officer of marines, or marine, shall obtain or attempt to obtain his pay, or any part thereof, upon or by means of any false or forged

Petty officer
obtaining his
pay by false
certificate,

11 G. 4, &
1 W. 4, c. 20.

punishable
as for per-
jury.

False swear-
ing, perjury.

Definition
of term
"ship."

Forging
certificates of
purchase or
sale of
stores, or
giving false
evidence,
punishable as
perjury.

Petitions for
probate of
seamen's
wills to be
sent to the
Admiralty.

Signing or
uttering
false peti-
tion; felony.

certificate, purporting to be a certificate of service in, or discharge from any of his majesty's ships, or from any hospital or sick quarters; every person so offending shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable to such pains and penalties as persons convicted of wilful and corrupt perjury are by law liable to.

90. That if any person shall take a false oath, or make false affirmation in any case wherein an oath or affirmation is authorized or required by this act to be taken or made, and for which no punishment is otherwise by this act provided; every such person, being thereof duly convicted, shall be liable to such pains and penalties as persons guilty of wilful and corrupt perjury are by law liable to.

93. That by the term "ship," is meant and intended every description of vessel employed in his majesty's service, whose officers and crew shall be in the pay of the royal navy.

2 Will 4, c. 40 (a), s. 32.—That if any person shall forge, or falsely make any certificate to be given under the authority of this act by the commissioners for executing the office of lord high admiral, or any of them, or by any superintendent of the purchase or sale of any naval or victualling stores, or shall utter or publish any false or altered certificate of any such purchase or sale, knowing the same to be false; or if any person shall take a false oath, or make a false affirmation, or give false evidence before any commissioner or commissioners for executing the office of lord high admiral aforesaid, or before any superintendent or inspector of seamen's wills, touching any matter which the said commissioners or any of them, or any superintendent or inspector, are or is authorised to inquire into; every such person, being duly convicted of any such offence or offences, shall be liable to suffer such punishment, pains, and penalties, as persons guilty of wilful and corrupt perjury are by law subject to.

33. That the petition for probate of will or letters of administration of the effects of any deceased petty officer or seaman, or non-commissioned officer of marines, or marine, or for obtaining a check or certificate in lieu of probate or letters of administration, in cases of claims where the deceased's assets shall not exceed thirty-two pounds and twenty pounds respectively, shall be addressed to the inspector of seamen's wills, and shall be forwarded to the secretary of the admiralty; and if any person shall subscribe, transmit, utter, or publish any false petition or application to the said inspector, knowing the same to be false, in order to obtain, or to enable any other person to obtain any

(a) Entitled, "*An act to amend the laws relating to the business of the civil departments of the navy, and to make other regulations for more effectually carrying on the duties of the said departments.*"

check or certificate in lieu of probate or letters of administration as aforesaid ; every person so offending shall be deemed guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year. 2 W. 4, c. 40.

46 *Geo. 3, c. 45 (a), s. 9.*—That if any person or persons shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in forging or counterfeiting the name or hand of the treasurer of the ordnance for the time being, or his deputy, or the person or persons duly authorized as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money in the hands or custody of the governor and company of the bank of England, on account of the treasurer of the ordnance ; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any draft, instrument, or writing in form of a draft, made by such treasurer of the ordnance, or his deputy, or the person or persons authorized as aforesaid, or shall utter or publish any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whomsoever ; every such person or persons so offending, being thereof lawfully convicted, shall be, and is, and are hereby declared and adjudged to be guilty of felony, *and shall suffer death as in cases of felony, without benefit of clergy.* Forging drafts &c., of the treasurer of the ordnance ; felony.

10. That all monies which shall be issued from the exchequer of Ireland, or received by the treasurer of the ordnance or his deputy in Ireland, for the service of his majesty's ordnance, shall be paid to the governor and company of the bank of Ireland, subject to the like rules, regulations, and restrictions, as the monies issued by the auditor of the exchequer to the governor and company of the bank of England on account of the treasurer of the ordnance, are made liable to by the provisions of this act. Provisions of this act extended to money received for the ordnance service in Ireland.

(a) Entitled, "*An act for the better regulation of the office of treasurer of Ordnance.*"

SECTION 7.

Embezzlement of Public Money and Stores.

50 Geo. 3, c. 59, s. 1.—Whereas it is most expedient that due provision should be made more effectually to prevent the embezzlement of money or securities for money belonging to the publick by any collector, receiver, or other officer entrusted with the receipt, custody, or management thereof; be it &c. (a)

Collectors
&c. of revenue, giving
false statements of
money entrusted to
them.

2. That if any such officer, collector, or receiver, so entrusted with the receipt, custody, or management of any part of the publick revenues, shall knowingly furnish false statements or returns of the sums of money collected by him or entrusted to his care, or of the balances of money in his hands or under his control; such officer, collector, or receiver so offending, and being thereof convicted, shall be adjudged guilty of a misdemeanor, and shall be adjudged to suffer the punishment of fine and imprisonment, at the discretion of the court, and be rendered for ever incapable of holding or enjoying any office under the crown.

Embezzlement by public officers,
felony.

2 Will. 4, c. 4, s. 1. [*Recites the act 50 Geo. 3, c. 59, s. 1.*] and whereas it is expedient that further provision should be made with regard to embezzlements by persons employed in the public service of his majesty: be it therefore &c., that so much of the said act as is hereinbefore recited shall be and the same is hereby repealed, except as to any offences against the same committed before the passing of this act, which offences shall be dealt with and punished as if this act had not been passed; and that from and after the passing of this act, if any person employed in the public service of his majesty, and entrusted by virtue of such employment with the receipt, custody, management, or control of any chattel, money, or valuable security, shall embezzle the same or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit, or for any purpose whatsoever except for the public service; every such offender shall be deemed to have stolen the same, and shall in England and Ireland be deemed guilty of felony, and in Scotland, of a high crime and offence; and on being thereof convicted in due form of law shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen

(a) This section enacted that if any person, to whom money should be issued for public service, should embezzle or misapply it, he should be adjudged guilty of a transportable misdemeanor. It has been repealed by the 2 Will. 4, c. 4.

years nor less than seven years, or to be imprisoned with or ^{2 W. 4, c. 4.} without hard labour, as to the court shall seem meet, for any term not exceeding three years.

2. That every tally, order, or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the united kingdom, or of Great Britain, or of Ireland, or of any foreign state, or to any share or interest in any fund of any body corporate, company, or society, or to any deposit in any savings bank, and every debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money, or for payment of money, whether of this kingdom or of any foreign state, and every warrant or order for the delivery or transfer of any goods or valuable thing, shall throughout this act be deemed for every purpose to be included under, and denoted by the words "valuable security:" and that if any person so employed and entrusted as aforesaid, shall embezzle or fraudulently apply or dispose of any such valuable security as aforesaid, he shall be deemed to have stolen the same within the intent and meaning of this act, and shall be punishable thereby in the same manner as if he had stolen any chattel of like value with the share, interest, or deposit to which such security may relate, or with the money due on such security, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in such security.

"Valuable security," its meaning.

3. That it shall be lawful to charge in the indictment to be preferred against any offender under this act, and to proceed against him for any number of distinct acts of embezzlement, or of fraudulent application or disposition as aforesaid, not exceeding three, which may have been committed by him within the space of six calendar months from the first to the last of such acts; and in every such indictment, where the offence shall relate to any money or any valuable security, it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be of money, without specifying any particular coin or valuable security; and such allegation, so far as it regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved, or if he shall be proved to have embezzled any piece of coin, or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and although such part shall have been returned accordingly.

Form of the indictment, and amount of proof.

4. That in every such case of embezzlement or fraudulent application or disposition as aforesaid of any chattel, money, or valuable security, it shall be lawful, in the order of committal by the justice of the peace before whom the offender shall be

Property to be laid in his majesty.

2 W. 4, c. 4.

Venue of offences.

So much of the recited acts, as relates to the naval, ordnance, and victualling stores, extended to Ireland.

Justices (with naval storekeeper's consent) may convict sum-

charged, and in the indictment to be preferred against such offender, to lay the property of any such chattel, money, or valuable security as aforesaid in the king's majesty.

5. That every offender against this act may be dealt with, indicted, tried, and punished either in the county or place in which he shall be apprehended, or in the county or place where he shall have committed the offence.

52 Geo. 3, c. 12, s. 1. [*Recites the English acts, 22 Car. 2, c. 5, (a); 9 & 10 Will. 3, c. 41; 9 Geo. 1, c. 8; 17 Geo. 2, c. 40, & 39 & 40. Geo. 3, c. 89.*] And whereas it is expedient that the several recited acts of parliament, so far as the same severally relate to his majesty's naval, ordnance, and victualling stores, therein respectively mentioned, should be extended to, and be in such and the same force in Ireland, as the same respectively now are in England; be it therefore, &c. that, from and after the passing of this act, all and every the said recited acts of parliament, so far as the same severally relate to his majesty's naval, ordnance, and victualling stores, therein respectively mentioned, and every clause, matter and thing therein respectively contained relating to his majesty's naval, ordnance, and victualling stores, shall extend to and be of such and the same force in Ireland, so far as the same are or may be capable of being applied to Ireland, as the same respectively now are in England, as fully and effectually, to all intents and purposes, as if the said several recited acts of parliament, and the several clauses, matters, and things therein respectively contained relating to his majesty's naval, ordnance, and victualling stores, and as the same respectively now are in force in England, were herein and hereby repeated and re-enacted for that part of the united kingdom called Ireland; and that all and every persons and person who shall commit in Ireland any offence or offences against all or any of the said recited acts of parliament, so far as the same severally relate to his majesty's naval, ordnance, or victualling stores, and shall be thereof lawfully convicted, shall be subject and liable to such and the same pains, penalties, forfeitures, and disabilities as such persons and person would, by the said several recited acts of parliament, or any of them, have been subject and liable to, in case such offence or offences had been committed within that part of the united kingdom called England.

2. That all and every persons and person who shall be accused in Ireland of any offence or misdemeanor against the said recited act of the thirty-ninth and fortieth years of the reign of his present majesty, for which, when committed in England,

(a) So much of this act of the 52 Geo. 3, as relates to the above act of the 22 Car. 2, is repealed by the act 9 Geo. 4, c. 53, save as to offences committed, and punishments awarded before or upon the 31st of August, 1828.

summary mode of trial and conviction is by the said act established, may be tried in the same summary manner before any justice of the peace for any county, division, city, town corporate, liberty, or place in Ireland, within which any such offence or misdemeanor shall be committed, provided that no such summary proceeding shall be had before any such justice of the peace, without consent in writing of his majesty's naval storekeeper for the time being, at any port in Ireland.

52 G. 3, c. 12
marily under
39 & 40 Geo
3, as in Eng-
land.

9 & 10 Will. 3, c. 41, s. 1, *Eng.*—Whereas, notwithstanding divers good laws made and enacted for the preventing of the stealing and imbezlement of his majesty's stores of war and naval stores, those frauds, thefts, and imbezlements are frequently practised, and the conviction of such offenders is rendered difficult and impracticable, by reason it rarely happens that direct proof can be made of such offender's immediate taking, imbezling, or carrying away any of his majesty's said stores of war and naval stores, out of or from his majesty's storehouses, docks, yards, ships, ordnance, or other places for keeping and preserving the same, but only that such goods are marked with the king's mark, and found in the custody and possession of the said person accused for stealing or imbezling the same, to the great encouragement of such wicked offenders, and to his majesty's and the kingdom's great damage; for preventing such imbezlements for the future, and for the more effectual execution of the laws and statutes already in force against such imbezlements and thefts; be it therefore enacted &c., that from and after the 24th day of June, (1698,) it shall not be lawful to or for any person or persons whatsoever, other than persons authorized by contracting with his majesty's principal officers or commissioners of the navy, ordnance, or victualling office, for his majesty's use, to mark any stores of war or naval stores whatsoever, with the marks usually used to and marked upon his majesty's said warlike and naval or ordnance stores; that is to say, any cordage of three inches and upwards, wrought with a white thread laid the contrary way, or any smaller cordage, to wit, from three inches downwards, with a twine in lieu of a white thread, laid to the contrary way as aforesaid, or any canvass wrought or unwrought, with a blue streak in the middle, or any other stores with the broad arrow, by stamp, brand, or otherwise, upon pain that every such person or persons, who shall make such goods so marked as aforesaid, not being a contractor with his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, for his majesty's use, or employed by such contractor for that purpose as aforesaid, shall for every such offence forfeit such goods, and the sum of two hundred pounds together with costs of suit; one moiety whereof shall be to his majesty, and the other moiety to the informer, to be recovered by action of debt, bill, plaint, or information in any of his majesty's courts of record at Westminster, wherein no essoin, privilege, protection, wager of law,

No warlike stores to be made with the king's mark, except for his use.

1 & 10 W. 3
c. 41.

Unlawfully
having
stores in pos-
session

injunction, or order of restraint, nor more than one imprisonment shall be allowed.

2. That such person or persons, in whose custody, possession, or keeping, such goods or stores marked as aforesaid shall be found, not being employed as aforesaid, and such person or persons who shall conceal such goods or stores marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods and the sum of two hundred pounds, together with the costs of prosecution, one moiety to his majesty, and the other moiety to the informer, to be recovered as aforesaid, and shall also suffer imprisonment until payment and performance of the said forfeiture, unless such person shall, upon his trial, produce a certificate under the hand of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, expressing then numbers, quantities, or weights of such goods, as he or she shall then be indicted for, and the occasion and reason of such goods coming to his or her hands or possession.

Stores may
be bought
and sold, if a
certificate be
given of such
sale.

4. Provided also, and be it further &c. that the said principal officers or commissioners of the navy, ordnance, or victualling office for the time being, may sell and dispose of any of the stores aforesaid, so marked as aforesaid, as they did or might have done before the making of this act; and that such person or persons as heretofore have or shall hereafter buy any such stores, or other stores so marked as aforesaid, of the said principal officers or commanders, or by their order, may keep and enjoy the same, without incurring the penalty of this act or any law to the contrary whatsoever, upon producing a certificate or certificates] under the hand and seal of three or more of the said principal officers or commissioners of the navy, ordnance, or victualling office, that they bought such goods from them the said principal officers or commissioners, or from such person or persons as did buy the said stores from the said principal officers or commissioners at any time before such stores were found in their custody; in which certificate or certificates the quantities of such stores shall be expressed, and the time when and where bought of the said commissioners, who, or any three or more of them for the time being, are hereby empowered and directed from time to time to give to such person or persons who shall desire the same, and have bought and shall hereafter buy any of the aforesaid stores, within thirty days after the sale and delivery of the said stores so sold or to be sold as aforesaid.

Not to pre-
vent the
lending of
stores to ves-
sels in dis-
tress.

8. Provided always, and be it further enacted by the authority aforesaid, that nothing in this act contained shall be construed to hinder any the principal officers and commissioners of the navy, or any chief commander of any of his majesty's ships at sea, to lend any of his majesty's stores to any merchant ship or vessel in distress or otherwise, as might lawfully be done before the making of this act, in case such goods so lent be restored

with all possible conveniency ; and provided such person or persons so borrowing the said stores from time to time, have such certificate as aforesaid, which the said principal officers and commissioners of the navy, or commanders-in-chief, are hereby required to give to the party or parties that shall so borrow the same.

9 & 10 W. 3,
c. 41.

9 Geo. 1, c. 8, s. 3, *Eng.* [*Enacts that the act 1 Geo. 1 stat. 2, c. 25, Eng., should be revived and made perpetual* [And whereas by an act made &c. [9 & 10 Will. 3, c. 41, *Eng.*] a penalty of two hundred pounds, with costs of prosecution and pain of imprisonment, is inflicted upon persons having in their custody, possession, or keeping, or concealing contrary to the said act, any warlike, naval, or ordnance stores therein mentioned, or any other stores marked with the broad arrow, by stamp, brand, or otherwise : and whereas it is necessary to give power to mitigate the said penalties, and to explain and amend the said act ; be it &c. that if any person or persons shall, after the five and twentieth day of March, (1723,) be lawfully convicted of having in his, her, or their custody, any timber, thick-stuff, or plank,* marked with the broad arrow, by stamp, brand, or otherwise, or of concealing any timber, thick-stuff, or plank* so marked, every such person so offending shall suffer, forfeit, and pay, as for having, keeping, or concealing any other warlike, naval, or ordnance stores contrary to the said act.

Having or
concealing
the king's
marked tim-
ber, punish-
able as for
having or
concealing
other stores.

4. Provided always, and it is hereby further enacted, that it shall and may be lawful to and for any judge, justice or justices, before whom any offender or offenders shall be convicted of any of the crimes or offences before recited, enacted, or mentioned in this act, to mitigate the penalty for the same, as he or they shall see cause, and to commit the offender or offenders so convicted, to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, until payment be made of the penalty and forfeiture imposed by this or the said former act, or mitigated as aforesaid, or to punish such offender or offenders corporally, by causing him, her, or them to be publicly whipped, or committed to some publick work-house, there to be kept to hard labour for the space of six-months, or a less time, as to such judge, justice or justices in his or their discretion shall seem meet ; any thing in the said recited act or in any other act to the contrary notwithstanding.

Justice may
mitigate pe-
nalties, and
commit until
paid ; or may
punish by
whipping
and hard la-
bor. -

5. That where any dispute shall arise between the persons, upon whose informations or oaths, any person or persons offending in the premisses or against the said former act, shall be prosecuted and convicted, touching any right or title to any of the forfeitures or penalties before mentioned, or any part thereof, the judge, justice, or justices before whom such offender or offenders shall be convicted, shall examine the matter and finally determine the same.

Justice shall,
in case of dis-
pute between
informers,
determine
their rights
as to the for-
feitures.

7 G. 2, c. 40.

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Justices of  
assize, and of  
the peace  
may try offen-  
ces relating to  
the stores.

17 Geo. 2, c. 40. s. 10. [Recites 9 & 10 Will 3, c. 41, ss. 1 & 2; and 9 Geo. 1, c. 8. ss. 3, 4 & 5, omitting the words between the asterisks.] And whereas some doubts have arisen touching the method of trial and punishment of offenders against the said recited acts, whether as the said acts are worded, such offender or offenders may be indicted and tried for the crimes and offences in the said acts mentioned, and whether any judge, justice or justices of assize, or justices of peace at the sessions may hear, try, and determine the same, and on conviction, set such fine, or mitigate the same, and the forfeitures and penalties inflicted by the aforesaid acts, on such offender or offenders, as the nature of the offences may deserve; or whether such offenders as aforesaid, in order for recovering the said forfeitures and penalties inflicted by the said act, can only be proceeded against by action of debt, bill, plaint, or information, in some of his majesty's courts of record at Westminster; by reason of which doubts, it has so happened, that offenders against the said recited acts, having been indicted for the same, have escaped unpunished, to the great encouragement of such offenders and others to commit the like crimes and offences for the future; for the remedying whereof, and for the explaining the acts above-mentioned, it is hereby declared and enacted, that it shall and may be lawful to and for any judge, justice, or justices at the assizes, or justices of the peace at the general quarter sessions to be holden for any county, city, borough, or town corporate, to hear, try, and determine, by indictment or otherwise, all or any the crimes or offences mentioned in the said recited acts; and that the said judge, justice or justices of assize, or justices of peace as aforesaid, before whom such offender or offenders shall be indicted, or tried and convicted of all or any the crimes or offences in the said recited acts mentioned, may impose any fine, not exceeding the sum of two hundred pounds, on such offender or offenders; one moiety to be paid to his majesty, and the other moiety to the informer; and may mitigate the said penalty and forfeitures inflicted by the said recited acts, or either of them, and to commit the offender or offenders so convicted and fined, to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, until payment be made of the penalty and forfeitures imposed by this or the said former acts, or mitigated as aforesaid; or in lieu thereof to punish such offender, or offenders in the premisses corporally, by causing him, her, or them to be publicly whipped, and committed to some house of correction or publick workhouse, there to be kept to hard labour for the space of three months, or less time, as to such judge, justice or justices of assize, or justices of the peace, shall in his or their discretion seem meet; any thing in the said recited acts or in any other act to the contrary notwithstanding.

**39 & 40 Geo. 3, c. 89, s. 1. [Recites 22 Car. 2, c. 5; 39 & 40 G. 3, c. 89. & 10 Will. 3, c. 41; 9 Geo. 1, c. 8; and 17 Geo. 2, c. 40, s. 10.]**

And whereas, notwithstanding the penalties and punishments inflicted by the said recited acts, the stealers, embezzlers, and receivers of his majesty's warlike and naval, ordnance, and victualling stores have greatly increased, so that it has become necessary to make some further and more effectual provision for preventing their wicked practices in future: be it therefore enacted &c., that from and after the passing of this act, every person or persons (such person or persons not being a contractor or contractors, or employed as in the said recited act of the ninth and tenth years of the reign of King William the Third is mentioned,) who shall willingly or knowingly sell or deliver, or cause or procure to be sold or delivered to any person or persons whomsoever, or who shall willingly or knowingly receive or have in his, her, or their custody, possession, or keeping, any stores of war, or naval, ordnance, or victualling stores, or any goods whatsoever, marked as in the said recited acts are expressed, or any canvass marked either with a blue streak in the middle or with a blue streak in a serpentine form, or any bewper, otherwise called buntin, wrought with one or more streaks of raised tape, (the said stores of war, or naval, ordnance, or victualling stores or goods above mentioned, or any of them, being in a raw or unconverted state, or being new or not more than one third worn); and such person or persons who shall conceal such stores or goods, or any of them, marked as aforesaid, shall be deemed receivers of stolen goods knowing them to have been stolen; and shall, on being convicted thereof in due form of law, be transported beyond the seas for the term of fourteen years, in like manner as other receivers of stolen goods are directed to be transported by the laws and statutes of this realm, unless such person or persons shall, upon his, her, or their trial, produce a certificate under the hands of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victualling, expressing the numbers, quantities, or weights of such stores or goods, as he, she, or they shall then be indicted for, and the occasion and reason of such stores or goods coming to his, her, or their hands or possession.

Selling, receiving, or concealing new stores, punished as receiving stolen goods.

Exemption.

2. That such person or persons (not being a contractor or contractors, or employed as aforesaid), in whose custody, possession, or keeping any the said stores called canvass, marked with a blue streak in a serpentine form, or bewper otherwise called buntin, wrought as above mentioned, shall be found, (such canvas or bewper, otherwise called buntin, not being charged to be new or not more than one third worn,) and all and every person and persons who shall be convicted of any offence contrary to so much of the said recited act of the ninth and tenth years of the reign of king William the third, as relates to the making, or the having in possession, or concealing any of his majesty's warlike, or naval, or ordnance stores, marked as

Persons convicted of having old canvass or buntin, or of having or concealing stores contrary to 9 & 10 Will. 3; liable also to be whipped and imprisoned.

39 & 40 G. 3,  
c. 89.

therein specified, shall, besides forfeiting such stores, and the sum of two hundred pounds, together with costs of suit as therein mentioned, be corporally punished by *pillory*, whipping, and imprisonment, or by any or either of the said ways and means, in such manner, and for such space of time as to the judge or justices before whom such offender or offenders shall be convicted, shall seem meet; any thing in the said last mentioned act, or in the before-recited acts of the ninth year of king George the first, and the seventeenth year of king George the second, to the contrary thereof in any wise notwithstanding: provided always, that it shall and may be lawful to and for such judge or justices to mitigate the said penalty of two hundred pounds, as he or they shall see cause.

Contractors  
&c., not  
exempt,  
save as to  
stores made  
up by them-  
selves, and  
not delivered  
in, or re-  
turned.

3. Provided always, and be it enacted, that nothing in this act or in the said recited act of the ninth and tenth years of the reign of king William the third contained, shall extend, or be deemed, taken, or construed to extend to exempt from the operation of this act, or the said recited act respectively, any person or persons being a contractor or contractors, or employed as in the said last mentioned act is mentioned, except only so far as concerns stores or goods marked as aforesaid, which shall be bona fide provided, made up, or manufactured by such person or persons, or by their order, and which shall not have been before delivered into his majesty's store, unless, having been so delivered, they shall have been sold or returned to such person or persons by the commissioners of his majesty's navy, ordnance, or victualling respectively.

Defacing  
the king's  
marks; fe-  
lony.

4. That if any person or persons shall, from and after the passing of this act, wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate, or erase, wholly or in part, any of the marks in the said act of the ninth and tenth years of the reign of king William the third, or in this act mentioned, or any other mark whatsoever, denoting the property of his majesty, his heirs or successors, in or to any warlike or naval, ordnance, or victualling stores, or cause, procure, employ, or direct any other person or persons so to do, for the purpose of concealing his majesty's property in such stores; such person or persons shall be deemed guilty of felony, and shall, on being convicted thereof, be transported to parts beyond the seas for the term of fourteen years, in like manner as other felons are directed to be transported by the laws and statutes of this realm.

Second of-  
fence.

5. That if any person or persons who shall hereafter be convicted of any offence contrary to this act, for which he shall not have been transported beyond the seas, or contrary to the said recited act of the ninth and tenth years of king William the third, shall be guilty of a second offence, either contrary to that act or to this present act, which would not otherwise, as the first offence, subject him, her, or them to transportation, and shall be thereof legally convicted; such person or persons shall,

by judgment of the court wherein he, she, or they shall be so convicted, be transported to parts beyond the seas for the term of fourteen years, in like manner as other offenders may be transported by the laws and statutes of this realm now in force.

29 & 40 G. 3,  
c. 89.

7. Provided always, and be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the court before whom any offender or offenders shall be indicted and convicted of all or any of the crimes or offences herein before mentioned to be punishable with transportation, to mitigate or commute such punishment, by causing the offender or offenders to be *set on the pillory*, publicly whipped, fined, or imprisoned, or by all or any one or more of the said ways and means, as such court in its discretion shall think fit; one moiety of which fine (if any imposed) shall be to his majesty, his heirs and successors, and the other moiety thereof to the informer; and also to order such offender or offenders to be imprisoned until such fine be paid; any thing herein before contained to the contrary thereof in any wise notwithstanding.

Court may  
mitigate or  
commute the  
punishment  
of transpor-  
tation.

8. And whereas the establishing by law a certain reward to the discoverers of persons guilty of stealing or embezzling any of his majesty's naval, ordnance, or victualling stores, or of any of the crimes or offences mentioned in the said recited act of the ninth and tenth years of king William the third, or in this act, might tend greatly to the detection of such offenders; be it therefore enacted by the authority aforesaid, that from and after the passing of this act, if any person or persons shall discover to his majesty's principal officers or commissioners of the navy, ordnance, or victualling, for the time being, or apprehend or first inform against any offender or offenders who shall have been guilty of stealing or embezzling his majesty's stores of war, or naval, ordnance, or victualling stores, or of any of the offences mentioned in the said recited act of the ninth and tenth years of the reign of king William the third, or in this present act herein before mentioned, which shall not be prosecuted in a summary way hereinafter prescribed, so as such offender or offenders be convicted thereof, such discoverer or discoverers, apprehenders or informers, shall have and receive a reward for such his, her, or their discovery, or for so apprehending or first informing as aforesaid, the sum of twenty pounds for every such offence so discovered, over and above any share of penalty or fine which he, she, or they may be entitled to as the informer or informers; so as such share of penalty or fine do not amount to more than the sum of twenty pounds, or, (if amounting to more than that sum) shall fail to be paid by the offender or offenders upon whom the same shall be inflicted, for the space of three calendar months next after his, her, or their conviction, provided such offender or offenders shall not be detained in pursuance of any sentence of imprisonment; and, if so detained, such share of penalty or fine shall fail to be paid within three calendar

Reward to  
persons in-  
forming  
against, or  
apprehend-  
ing offenders.



39 & 40, G. 3,  
c. 48.

Reward to  
be paid, upon  
certificate of  
the clerk of  
assize.

months next after the expiration of such sentence of imprisonment.

10. That the principal officers and commissioners of his majesty's navy, ordnance, or victualling, as the case may require, shall cause the said reward of twenty pounds to be paid by the treasurer of the navy or ordnance respectively for the time being, out of any publick money in his hands, upon producing to them a certificate, under the hand of the clerk of assize or his deputy, or other proper officer of the court before whom such offender or offenders shall be tried, certifying the conviction of the offender or offenders, and that the informer's share of any penalty or fine inflicted upon such offender or offenders doth not amount to more than the sum of twenty pounds, or, if amounting to more, hath failed to be paid by such offender or offenders for the space of three months next after his or their conviction; unless such offender or offenders shall then be detained in pursuance of any sentence of imprisonment, and then for the space of three months next after the expiration of such sentence; which certificate the said clerk of assize, or other proper officer is hereby required to give, and for which he shall charge the sum of five shillings, and no more; and the money paid by any such treasurer on account of such rewards shall be allowed in his accounts, and he shall be discharged thereof accordingly; any law, custom, or usage to the contrary thereof in anywise notwithstanding.

Justices &c.  
may grant  
warrants to  
search for  
stores.

11. That it shall and may be lawful to and for any commissioner of the navy, ordnance, or victualling, for the time being, (who, for the purposes hereinafter mentioned, is hereby authorised to act in every respect as if he had been named as a justice of the peace in the commission of the peace for the county, city, division, town corporate, liberty, or place in which he shall be resident, or into which his warrant shall be issued,) or any justice of the peace for any county, division, city, town corporate, liberty, or place within this kingdom, upon the oath of one or more credible person or persons, that there is reason or cause to suspect that any navy, ordnance, or victualling stores or goods belonging to his majesty, his heirs or successors, are concealed in any dwelling-house, ware-house, work-shop, out-house, yard, garden, or other place, or on board any ship, vessel, barge, boat, or other craft, by warrant under his hand and seal, to cause every such dwelling-house, ware-house, work-shop, out-house, yard, garden, or place, ship, vessel, barge, boat, or other craft, in whatsoever county, division, city, town corporate, liberty, or place, the same or any of them shall be, (in case such warrant shall be granted by a commissioner as aforesaid,) to be searched in the day time, by any police officer, constable, headborough, or other peace officer, either of the county, division, city, town corporate, liberty, or place in which the premises, ship, vessel, barge, boat, or other craft shall be, or in which the commis-

Commissioner granting such warrant (if granted by a commissioner) shall then reside; and in case any stores or goods marked as hereinbefore or in the said recited act of the ninth and tenth years of king William the third is mentioned, shall, upon such search, be found, to cause the same and the offender or offenders, to be brought before such commissioner or justice of the peace, who is hereby required to commit or bind over, or otherwise to deal with such offender or offenders according to law, for such his or their offence; and that in case, upon any such search, or upon any seizure whatsoever of stores or goods marked as aforesaid, any naval, ordnance, or victualling stores, not so marked as aforesaid, shall be found, which may reasonably be suspected to belong to his majesty, the party or parties in whose possession or keeping the same shall be found, shall be required to give to the commissioner or justice of the peace respectively, before whom the said stores or goods shall and may be brought, an account, to the satisfaction of such commissioner or justice, that the same were not embezzled or stolen from any of his majestys' ships or vessels, yards, store-houses, or other places, or that, if the same were embezzled or stolen, the same had come to the possession of the said party or parties honestly, and without any knowledge or suspicion that the same had been embezzled or stolen; on failure whereof, by a reasonable time to be set by such commissioner or justice of the peace, the said stores or goods shall thereupon become forfeited, and such party or parties shall be deemed and adjudged guilty of a misdemeanor.

39 & 40 G. 3.  
c. 89.

Suspected:  
stores shall,  
if found, be  
accounted  
for.

12. That it shall and may be lawful for any person or persons deputed or appointed by the principal officers or commissioners of the navy, ordnance, or victualling, or any three of them respectively, at any time or times from and after the passing of this act, to stop, search, and detain in some place of safety, any barge, boat, or other craft, which there shall be reason to suspect doth contain any naval, ordnance, or victualling stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things stolen, embezzled, or unlawfully procured from or out of any of his majesty's ships or vessels, yards, storehouses, or other places, and also to apprehend and detain, or cause to be apprehended and detained, any person or persons who may be reasonably suspected of having or conveying any such stores or other things in such barge, boat, or craft, and such person or persons so apprehended shall be (as soon as conveniently may be) conveyed before any commissioner of the navy, ordnance, or victualling, for the time being, or before one or more justice or justices of the peace for the county, division, city, town corporate, liberty, or place in which such seisure shall be made, together with the stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things so found in such boat or other craft; which said commissioner or justice is hereby required to commit or bind over, or otherwise to deal in.

Vessels, sus-  
pected to  
have on  
board stolen  
stores, may  
be detained;

and also the  
persons sus-  
pected of  
conveying  
such;

to be dealt  
with, as here-  
in.

39 & 40 G. 3,  
c. 80.

If the party  
be convicted,  
the stores  
shall be for-  
feited.

Whomay ap-  
prehend per-  
sons sus-  
pected of un-  
lawfully  
having  
stores.

with such person or persons according to law, in respect to any of the said last-mentioned stores and things which shall be so marked as aforesaid; and in respect to any of such stores and things which shall not be so marked, but which shall nevertheless be reasonably suspected to be the property of his majesty, the said person or persons, on whom the same shall be found, shall be required to give an account, to the satisfaction of such commissioner or justice, that the same were not embezzled or stolen as aforesaid, or that, if they were embezzled or stolen, the same had come to his or their possession honestly and without any knowledge or suspicion that the same had been embezzled or stolen; on failure whereof, by a reasonable time to be set as aforesaid, the said last-mentioned stores or things shall thereupon become forfeited, and the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor; and in case the said person or persons shall be convicted of stealing, embezzling, or unlawfully having in his, her, or their possession any of the said stores or things which shall be so marked as aforesaid, or shall be adjudged guilty of a misdemeanor for not giving a satisfactory account as aforesaid, with respect to such of the said stores or things as shall not be so marked as aforesaid, such barge, boat, or other craft in which such stores or things, or any of them, shall be found, with its tackle, apparel, and furniture, shall, upon such conviction or adjudication, become and be adjudged by such commissioner or justice forfeited, and shall be disposed of in manner hereinafter mentioned.

13. That it shall and may be lawful to and for any person or persons deputed or appointed as aforesaid, or any police officer, constable, head-borough, or other peace officer, or any beadle or watchman (during such time as he shall be on duty,) of every parish and place where he shall be an officer, to apprehend and detain, or cause to be apprehended and detained, all and every person and persons who may reasonably be suspected of having or carrying, or any ways conveying any naval, ordnance, or victualling stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things stolen or unlawfully procured from or out of any of his majesty's ships, or vessels, yards, store-houses, or other places, and also to seize and detain in some place of safety, such stores, materials, or things as last aforesaid; and, as soon as conveniently may be, to convey, or cause the person or persons so apprehended to be conveyed before any commissioner of the navy, ordnance, or victualling, or before any one or more justice or justices of the peace for any county, division, city, town corporate, liberty, or place, in or near to the place of seizure, together with the said stores and other things; and such and the like proceedings shall and may be had and taken against the said person or persons in respect of such last-mentioned stores or things, whether marked

**or not marked, and such forfeiture be incurred, and adjudication made, as are above directed with respect to stores found in any barge, boat, or other craft as aforesaid.** 39 & 40 G. 3,  
c. 89.

**16. That every person deemed and adjudged guilty of any of the misdemeanors aforesaid before any commissioner or justice of the peace as aforesaid, shall, for every such misdemeanor, forfeit for the first offence the sum of forty shillings; for the second offence, the sum of five pounds; and for the third and every subsequent offence, the sum of ten pounds, over and above the other forfeitures above mentioned: all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him or them the overplus, after the charges of the said distress and sale deducted), by warrant under the hand and seal of such commissioner or justice of the peace before whom such offender was convicted, directed to any constable or other peace officer of the county, division, city, town corporate, liberty, or place; and shall be disposed of in manner following, (that is to say,) one moiety to the person or persons apprehending such offender or offenders, or giving information, as the case shall be, and the other moiety thereof to the treasurer of the navy or ordnance for the time being, as the case may require, to be applied as before mentioned; and in case the constable or other peace officer to whom such warrant shall be directed, shall return to such commissioner or justice of the peace that the offenders or offender named therein have not nor hath not any goods or chattels in his county or constableness, whereby he can levy the said penalty, (which return the said constable or other peace officer is hereby required in that case to make within a reasonable time, to be set by the said commissioner or justice of the peace, and during which time the said offenders or offender shall be kept in safe custody by the order of such commissioner or justice of the peace,) then and in such case the said commissioner or justice shall, and he is hereby required by warrant under his hand and seal, directed as aforesaid, to cause such offenders or offender to be committed to the common gaol of the county, division, city, town corporate, liberty, or place in which such seizure shall have been made, there to remain without bail or mainprize, for the space of three calendar months, unless such penalty shall be sooner paid.**

**Punishment of persons guilty of the misdemeanors in this act mentioned.**

**17. That every adjudication in any of the said misdemeanors shall be certified, by the commissioner or justice of the peace making the same, to the next general or quarter sessions of the peace for the county, division, city, town corporate, or place in which such seizure shall be made, to be filed and entered amongst the records of the said session; and such conviction shall not be set aside or quashed for want of form, nor be liable to be removed by certiorari, advocacy, or suspension, into any**

**Adjudications shall be certified to next sessions; and shall be final.**

39 & 40 G. 3, other court, but shall be deemed and taken to be final to all intents and purposes whatsoever.

c. 89.

Justices &c.  
may fine  
persons (not  
contractors),  
for unlaw-  
fully having  
or receiving  
stores.

18. And whereas it might tend to prevent the commission of offences, if power were given to the commissioners of his majesty's navy, ordnance, and victualling, and his majesty's justices of the peace out of sessions, to hear and determine offences in a summary way, in cases where the stores found are of small value, and to fine or otherwise punish the offenders accordingly; be it therefore &c., that from and after the passing of this act, it shall and may be lawful to and for any principal officer or commissioner of the navy, ordnance, or victualling, for the time being, or any justice of the peace for any county, division, city, town corporate, liberty, or place within this kingdom, to hear and determine any complaint against any person or persons (not being a contractor or contractors, or employed as aforesaid), for unlawfully selling or delivering, or causing or procuring to be sold or delivered, or for receiving or having in his, her, or their custody, possession, or keeping, or for concealing any stores of war, or naval, ordnance, or victualling stores, or goods marked with such marks respectively as are hereinbefore mentioned, of any value in the whole, not exceeding twenty shillings; which said commissioner or justice respectively is hereby authorized and required, upon any information exhibited, or complaint made in that behalf, at any time within three calendar months next after any such offence shall have been committed, to cause the party or parties accused to be apprehended and brought before him; or if he, she, or they shall have absconded or cannot be found, then to be summoned to appear before such commissioner or justice, by a notice or summons left at his, her, or their last or usual place of abode, and also to cause the witnesses on either side to be summoned; and such commissioner or justice shall examine into the matter of fact, and, upon due proof made thereof, either by the voluntary confession of the party or parties, or by the oath of one or more credible witness or witnesses, (which oath the said commissioner or justice respectively is hereby authorized to administer,) give judgment or sentence accordingly; and in case the party or parties accused shall be convicted of such offence, then it shall and may be lawful to and for such commissioner or justice of the peace respectively, to inflict a fine of tenpounds upon him, her, or them, for such his, her, or their offence; which said fine so inflicted shall be divided and distributed, one moiety thereof to the informer or discoverer of the offence, and the other moiety thereof (the necessary charges for the recovery thereof being first deducted,) to the treasurer of his majesty's navy or ordnance, as the case may be, to be by him applied in such manner as hereinbefore mentioned with respect to the produce of barges, boats, or other craft seized and sold under the authority of this act, and to award and issue out his warrant under his hand and seal for levying

Disposal of  
the fine.

uch fine so adjudged on the goods of the offender or offenders, and to cause sale to be made thereof, for payment of such fine and the reasonable charges of distress, (to be judged by such commissioner or justice respectively,) in case they shall not be redeemed within six days, rendering to the party the overplus, if any; and where sufficient goods of the party cannot be found to answer the said fine, to commit the said offender or offenders to the common gaol of the county, division, city, town corporate, liberty, or place, for the space of three calendar months, unless such fine shall be sooner paid; or in lieu of such fine, to cause such offender or offenders to be imprisoned and kept to hard labour in the house of correction for the space of three calendar months, as to such commissioner or justice of the peace respectively shall be thought fit; and every such commissioner or justice shall cause the amount of every such last-mentioned moiety of fine which he shall so receive, and also the moiety of every sum arising from the sale of any barge, boat, or other craft sold under the authority of this act, and paid into his hands as aforesaid, to be paid into the hands of the said treasurer of the navy or ordnance, within thirty days after the expiration of the year in which such fines shall be received by him, or in default thereof such commissioner or justice respectively shall forfeit the sum of fifty pounds, to be recovered with double costs of suit, by any person or persons who shall sue for the same by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or court of exchequer in Scotland, wherein no essoin, protection, or wager of law, nor more than one imparlance shall be allowed; one moiety of which last-mentioned fine shall go to his majesty, his heirs and successors, and the other moiety thereof to him or them who shall sue for the same as aforesaid.

39 & 40 G. 3,  
c. 89.

Committal  
in default of  
payment.

Justices &c.  
shall pay  
over fines to  
the treasurer  
of the navy,  
&c.

19. Provided always, nevertheless, that it shall and may be lawful to and for the said commissioner or justice, before whom any person shall be convicted in a summary way as aforesaid, (if he shall see cause,) to mitigate and lessen any such before-mentioned fine of ten pounds to be inflicted in that behalf, as he shall think fit, (the reasonable costs of the officers and informers, as well in making the discovery as in prosecuting the same, being always allowed over and above such mitigation,) and so as such mitigation do not reduce the fine to less than one moiety of the said sum of ten pounds, over and above the said costs and charges; any thing contained in this act to the contrary thereof in anywise notwithstanding.

Justice &c.  
may miti-  
gate penalty  
to a certain  
extent.

20. Provided also, and be it enacted, that in case such commissioner or justice of the peace shall, upon the hearing and determining of such complaint as aforesaid, adjudge the offender or offenders, in lieu of a fine, to be imprisoned and kept to hard labour as aforesaid, that then the informer or person or persons

If offender  
imprisoned  
and not fined,  
the informer  
shall have a  
reward from  
the navy  
board, on

31 & 40 G. 3.  
c. 39.

production of  
the certifi-  
cate of the  
convicting  
justice.

No summary  
proceeding  
before any  
justice, with-  
out consent  
of the com-  
missioners of  
the navy.

Appeal from  
such justice  
to the quar-  
ter sessions.

Form of  
conviction.

who shall have discovered such offender or offenders, shall have and receive, as a reward for such his, her, or their discovery, the sum of five pounds for every such offence so discovered; and the principal officers and commissioners of his majesty's navy, ordnance, or victualling, as the case may require, shall cause the said reward of five pounds to be paid by the treasurer of the navy or ordnance respectively for the time being, out of any publick money in his hands, upon such informer or other person producing to them a certificate under the hand and seal of the commissioner or justice of the peace who shall have convicted such offender or offenders as aforesaid, certifying such conviction and the punishment which he hath inflicted upon the offender or offenders, and the name or names of the person or persons who in his judgment is entitled, and in what proportion or proportions, to such reward; which certificate the said commissioner or justice of the peace respectively is hereby required to give without fee or reward; and the money paid by any such treasurer on account of such last-mentioned rewards shall be allowed in his accounts, and he shall be discharged thereof accordingly, any law, custom, or usage to the contrary thereof in anywise notwithstanding: Provided also, that no such summary proceeding as before mentioned shall be had before any justice of the peace under the authority of this act, without the consent in writing of the principal officers or commissioners of his majesty's navy, ordnance, or victualling for the time being, or one of them, for that purpose first had and obtained; and that every adjudication or sentence to be had or given without such consent as aforesaid, shall be null and void to all intents and purposes whatsoever.

21. That if any person or persons shall find himself, herself, or themselves aggrieved by the judgment of any such commissioner or justice, touching or concerning any such stores as last aforesaid, under the value of twenty shillings, then he, she, or they shall or may, upon entering into a recognizance to his majesty, with one or more surety or sureties, to the satisfaction of such commissioner or justice, to the amount of treble the value of such fine, appeal to the justices of the peace at their next general quarter sessions of the peace for the county, division, city, town corporate, liberty, or place wherein the offence was committed, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment shall be affirmed, it shall and may be lawful for such justices of the peace to award the person or persons so appealing to pay such costs occasioned by such appeal as to them the said justices shall seem meet, and to enforce payment thereof, according to the course and practice of such court.

22. And in order to avoid frivolous and vexatious appeals, be it further enacted, that the commissioner or justice of the peace,



**Before** whom any offender shall be convicted as aforesaid, shall **cause** the said conviction to be made out in the manner and **form** following, or in any other form of words to the like effect, **mutatis mutandis**; which conviction shall be good and effectual **to all** intents and purposes, without stating the case, or the facts **or evidence**, in any more particular manner; (that is to say,) 39 & 40 G. 3  
c. 80.

**Be it remembered** that on the      day of      in the year of **our Lord**      A. B. of      in the      of      was convicted **before me**, C. D. one of the commissioners of his majesty's **[or one of his majesty's justices of the peace for the      of**  
**as the case may be,]** for that the said A. B. on the      day of **now last past**, at the      of      in the said      of  
**did** [*here state the offence against the act*] contrary to the statute **in such case made and provided.** Given under my hand and **seal** the      day of      in the year of our Lord

Conviction to be returned to quarter sessions, and not to be removed by Certiorari.

**Which conviction** the said commissioner or justice shall cause to **be written** fairly upon parchment or paper, and returned to the **next general quarter sessions** of the peace for the county, division, city, town corporate, liberty, or place where such conviction was made, to be filed by the clerk of the peace, and there **to remain** and be kept among the records of the same county, division, city, town corporate, liberty, or place, and the same **shall not be removed** by certiorari, advocacy, or suspension, into any court whatsoever. Conviction to be returned to quarter sessions, and not to be removed by certiorari.

**23.** That if any person or persons shall be summoned as a **witness or witnesses**, to give evidence before such commissioner, or justice or justices of the peace, touching any of the matters relative to this act, either on the part of the prosecutor or the party or parties accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed by such commissioner or justice or justices of the peace before whom the seizure, complaint, or prosecution shall be depending; that then every such person shall forfeit for every **such offence** the sum of ten pounds, to be recovered, levied, and paid and applied, in such manner and by such means as is above directed with respect to fines on summary convictions. Witnesses not attending.  
Penalty.

**24.** Provided always, and it is hereby enacted and declared, that nothing hereinbefore contained, which gives to any commissioner or justice of the peace, power or authority to hear and determine offences in a summary way, shall extend, or be deemed, construed, or taken to extend to prevent the party or parties accused of selling or delivering, or of having in his, her, or their custody, possession, or keeping, or of receiving or concealing any of the stores marked as above-mentioned, under the value of twenty shillings, from being prosecuted as receivers of stolen goods under this act, or for unlawfully having the same in his, her, or their custody, or concealing the same under the said Nothing herein to oust the jurisdiction of superior courts, so that defendant not twice punished.



39 & 40 G. 3,  
c. 89.

recited acts of the ninth and tenth years of the reign of King William the Third, the ninth year of the reign of King George the First, or the seventeenth year of the reign of King George the Second, in any court of record, oyer and terminer, or otherwise as they might have been if no such power or authority had been given; or to take away from any person or court whatsoever any power, right, jurisdiction, preeminence, or authority, which he, or they, or any of them ought lawfully to have had and enjoyed for the hearing and determining of such offences, in case no such power or authority to hear and determine the same in a summary way had been given, so as that the same person shall not be punished twice for the same offence.

Persons  
quieted  
against pe-  
nalties, by  
production  
of a certifi-  
cate of their  
having  
bought the  
stores from  
the commis-  
sioners, &c.

25. That the said commissioners of the navy, ordnance, or victualling, for the time being, may sell and dispose of any of the stores aforesaid so marked as aforesaid, as they did or might have done before the making of this act; and that such person or persons as heretofore have, or shall hereafter buy any such stores or other stores so marked as aforesaid, of the said respective commissioners, may keep and enjoy the same, without incurring the penalty of this act or any law to the contrary whatsoever, upon producing a certificate or certificates, under the hand and seal of three or more of the said commissioners, that they bought such goods or stores from them at any time before they sold or delivered the same, or before the same were found in their custody, or a certificate from such person or persons as shall appear to have bought the said stores from them the said commissioners, that the stores so sold or delivered by them, or so found in their custody, were the stores or part of the stores so bought of the said commissioners as aforesaid; in which certificate or certificates, the quantities of such stores shall be expressed, and the time when and where bought of the said commissioners, who, or any three or more of them for the time being, and also the person or persons afterwards selling the same, are hereby empowered and directed, from time to time, to give such certificate to such person or persons as shall desire the same, and have bought, and shall hereafter buy any of the aforesaid stores within thirty days after the sale and delivery thereof.

Forging or  
uttering  
false certi-  
ficates;

26. That if any person or persons shall make, sign, or give any false certificate, bill of parcels, or other instrument purporting the identity or the sale or disposal of any goods or stores, as goods or stores so purchased of the said commissioners as aforesaid; or if any person or persons shall utter or publish any such false certificate, bill of parcels, or other instrument purporting as aforesaid, knowing the same to be false; every such offender, upon conviction thereof in due form of law, shall forfeit the sum of two hundred pounds, and be further corporally punished as by this act is directed with respect to persons having in their possession or concealing his majesty's warlike, naval, or

Penalty.

ordnance stores, contrary to the said act of the ninth and tenth 39 & 40 G. 3,  
years of king William the third; one moiety of which penalty c. 82.  
shall be to his majesty, his heirs and successors, and the other  
moiety thereof, with full costs of suit, to the informer, to be re-  
covered in such manner as the penalty of two hundred pounds,  
inflicted by the said last-mentioned act, is by that act or any law  
now in force, made recoverable.

## CHAPTER IV.

### OFFENCES AGAINST PUBLIC POLICE AND ECONOMY.

#### SECTION 1.

#### *Offences against Public Health and Safety.*

11 *Eliz. sess. 3, c. 5, s. 1.*—Prayen the commons in this present parliament assembled, that where divers persons in this realm, rather respecting their private ease than the common utilitie and profit, as being carelesse of the commonwealth, doe in season of the year, lay into rivers, streams, brookes, and other fresh running-waters, their hemp and flaxe to be watred, keeping the same there long time ; and also tanners and others doe lay likewise in the same waters, hydes with lyme bound up in them, by reason whereof the waters are so infected, as the fishes therein do die; such as are forced to drink thereof, as well man as beast, are poysoned; and meates or dringes made therewith are perillously corrupted, to the great danger of man and beast; and that hitherto no punishment have been provided for the correction of this pernicious disorder: that it therefore be enacted &c., that no manner of person or persons, of what degree or condition soever he or she be, shall, from and after the proclamation of this act be made, lay into any river, stream, brooke, or other fresh-running water, any hemp or flaxe, or any hydes bound as aforesaid, to be watred and seasoned, upon pain to lose and forfeit hemp, flaxe, and hyde or hydes, so layd as afore contrarie to this act, or of the treble value of the same, the one halfe of which forfeiture to be to the queen our sovereign lady, her heires and successours, and the other halfe to such as shall find or present the default; and such as shall be entitled to the said forfeiture, shall have an action of debt or detinue for the same, by writ, bill, plaint, or information in any of the the queens' courts, in which action or suit, no essoine, protection, priviledge, nor wager of law shall be allowed or admitted.


Hemp, flax, or hides with lime in them, shall not be watred in any running stream.

Justices may inquire thereof upon presentment.

2. That the justices of the peace in everie shire, citie, and towne corporate, within limites of their commission and authorities, shall have power and authoritie to inquire, hear, and determine everie offence hereafter to bee done or committed contrarie to this act, as well by information as by presentment afore them, and to make such processe upon every presentment as they commonly doe upon indictments of tresspasse.

4. [*The act shall be proclaimed four times a year in market towns, and at the assizes and sessions.*]

31 Geo. 3, c. 38 s. 2.—That it shall and may be lawful to and for every grand jury which shall be duly impanelled at the assizes, or at any general quarter sessions to be held in any county, county of a city, or county of a town, within which any common shall lie, upon information on oath made before any magistrate of such county, county of a city, or county of a town respectively, who is hereby empowered to administer the same, being returned to such grand jury, of any encroachment which shall have been made within ten years from the time of passing this act, or which shall hereafter be made upon any such common, whether by inclosing any part thereof, or building any house, hut, or cabin upon the same, to present such encroachment by indictment or presentment, as a public nuisance, which indictment or presentment, if it shall not be defective on the face of it, shall be confirmed by the judge or justices before whom such grand jury shall be so impanelled; and upon such indictment or presentment being so confirmed, the sheriff of such county, county of a city, or county of a town, shall forthwith prostrate and abate every such nuisance.

31 G. 3, c. 38.  
  
 Grand Juries may present all encroachments upon commons, as nuisances.

3. Provided always, and be it enacted, that it shall and may be lawful to and for every person who shall be affected by such indictment or presentment, to put in his traverse to the same, at the assizes, or at any general quarter sessions, at which it shall be so found and presented, by pleading that such inclosure, house, hut, or cabin is not an encroachment upon such common, which traverse shall be forthwith tried, if there shall be time for trying the same, and if not, then at the next assizes or general quarter sessions ensuing, and the verdict to be found upon such traverse shall be final and conclusive as to the matter of the same, saving to all persons, and to all bodies politic and corporate, their heirs and successors respectively, all rights of common to which they now are, or hereafter may be entitled.

Presentment may be traversed.

1 & 2 Geo. 4, c. 41.—Whereas great inconvenience has arisen, and a great degree of injury has been and is now sustained by his majesty's subjects, in various parts of the united empire, from the improper construction, as well as from the negligent use of furnaces employed in the working of engines by steam. And whereas by law every such nuisance, being of a public nature, is abateable as such by indictment; but the expense attending the prosecution thereof has deterred parties suffering thereby from seeking the remedy given by law: be it therefore &c., that it shall and may be lawful for the court by which judgment ought to be pronounced in case of conviction on any such indictment, to award such costs as shall be deemed proper and reasonable to the prosecutor or prosecutors, to be paid by the party or parties so convicted as aforesaid, such award to be made either before or at the time of pronouncing final judgment, as to the court may seem fit.

Upon prosecutions for nuisances by steam engines, the court may award costs to the prosecutor.

1 & 2 G. 4.  
c. 41.

Court may  
make order  
for prevent-  
ing the re-  
currence of  
the nuisance.

Act not to  
extend to  
steam en-  
gines used  
for mining or  
smelting.

Vessels &c.  
coming from  
places sup-  
posed to be  
infected,  
shall per-  
form quaran-  
tine.

2. That if it shall appear to the court by which judgment ought to be pronounced in case of conviction on any such indictment, that the grievance may be remedied by altering the construction of the furnace so employed in the working of engines by steam, it shall be lawful to the court, without the consent of the prosecutor, to make such order touching the premises, as shall be by the said court thought expedient for preventing the nuisance in future, before passing final sentence upon the defendant or defendants so convicted.

3. Provided always, and be it enacted, that the provisions of this act, as far as they relate to the payment of costs and the alteration of furnaces, shall not extend or be construed to extend to the owners or proprietors or occupiers of any furnaces of steam engines erected solely for the purpose of working mines of different descriptions, or employed solely in the smelting of ores and minerals, or in the manufacturing of the produce of such ores or minerals on or immediately adjoining the premises where they are raised.

6 Geo. 4, c. 78 (a), s. 2.—That from and after the first day of June, (1825,) all vessels, as well his majesty's ships of war as others, coming from, or having touched at any place from whence his majesty, his heirs or successors, by and with the advice of his or their privy council, shall have adjudged and declared it probable that the plague or other infectious disease or distemper highly dangerous to the health of his majesty's subjects may be brought, and all vessels and boats receiving any person, goods, wares and merchandize, packets, packages, baggage, wearing-apparel, books, letters, or any other article whatsoever, from or out of any vessel so coming from or having touched at such infected place as aforesaid, whether such persons, goods, wares and merchandize, packets, packages, baggage, wearing-apparel, books, letters, or other articles shall have come or been brought in such vessels, or such person shall have gone, or articles have been put on board the same, either before or after the arrival of such vessels at any port or place in the united kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, and whether such vessels were or were not bound to any port or place in the united kingdom or the islands aforesaid, and all persons, goods, wares and merchandize, packets, packages, baggage, wearing-apparel, books, letters, or any other article whatsoever on board of any vessels so coming from or having touched at such infected place as aforesaid, or on board of any such receiving vessels or boats as aforesaid, shall be and be considered to be liable to quarantine within the meaning of this act and of any order or orders

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(a) Entitled, "*An act to repeal the several laws relating to the performance of quarantine, and to make other provisions in lieu thereof.*"

which shall be made by his majesty, his heirs and successors, by and with the advice of his or their privy council, concerning quarantine and the prevention of infection, from the time of the departure of such vessels from such infected place as aforesaid, or from the time when such persons, goods, wares, merchandize, packets, packages, baggage, wearing-apparel, books, letters, or other articles shall have been received on board respectively; and all such vessels and boats as aforesaid, and all persons (as well pilots as others), goods, wares and merchandize, and all other articles as aforesaid, whether coming or brought in such vessels or boats from such infected place as aforesaid, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the united kingdom or the islands aforesaid, and all persons, goods, wares and merchandize, and other articles as aforesaid on board such receiving vessel or boat as aforesaid, shall, upon their arrival at any such port or place, be obliged to perform quarantine in such place or places, for such time, and in such manner as shall from time to time be directed by his majesty, his heirs or successors, by his or their order or orders in council, notified by proclamation, or published in the London Gazette; and that until such vessels and boats, persons, goods, wares and merchandize, and other articles as aforesaid, shall have respectively performed, and shall be duly discharged from quarantine, no such person, goods, wares or merchandize, or other articles as aforesaid, or any of them, shall, either before or after the arrival of such vessels or boats at any port or place in the united kingdom or the islands aforesaid, come or be brought on shore, or go and be put on board any other vessel or boat, in order to come or be brought on shore in any such port or place, although such vessels, so coming from such infected place as aforesaid, may not be bound to any port or place in the united kingdom or the islands aforesaid, unless in such manner, and in such cases, and by such licence as shall be directed or permitted by such order or orders made by his majesty, his heirs or successors, in council as aforesaid; and all such vessels and boats, whether coming from such infected place as aforesaid, or being otherwise liable to quarantine as aforesaid, and all persons (as well pilots as others), goods, wares and merchandize, and other articles as aforesaid, whether coming or brought in such vessels or boats, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the united kingdom or the islands aforesaid, and although such vessels or boats shall not be bound to any port or place in the united kingdom or the islands aforesaid; and all commanders, masters, or other persons having the charge or command of any such vessels or boats, whether coming from any infected place, or being otherwise liable to quarantine as aforesaid, shall be subject to all provisions, rules, regulations, and restrictions contained in this act, or in any order or orders which shall be made by

6 G. 4, c. 78. his majesty, his heirs and successors, in council as aforesaid, concerning quarantine and the prevention of infection, and to all the pains, penalties, forfeitures and punishments contained in this act, for any breach or disobedience thereof, or of any order or orders of his majesty in council made under the authority thereof.

Lord lieutenant may, by proclamation in the Dublin Gazette, make regulations respecting quarantine.

4. Provided always, and be it enacted, that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland, by his or their order or orders, made by the advice and consent of his majesty's privy council in Ireland, and notified by proclamation, to give directions, where the urgency of the case shall require, as to the place or places, and as to the time and manner in which ships and vessels arriving, and persons, goods, and merchandizes coming or imported into any port or place in Ireland, shall make their quarantine, in pursuance of the provisions of this act; and that until such ships, vessels, persons, goods, and merchandizes shall have respectively performed and been discharged from such quarantine, pursuant to the provisions of this act, it shall and may be lawful for any such persons, goods, or merchandizes, or any of them, to come or be brought on shore, or to go or be put on board any other ship or vessel in any place in Ireland, in such cases, and by such licence as shall or may be directed or permitted by any order or orders, to be made by the lord lieutenant or other chief governor or governors of Ireland, by the advice and consent of the privy council there, and notified as aforesaid; and that all such ships and vessels, and the persons or goods coming or imported in, or going and being put on board such ships or vessels, and all ships, vessels, boats, and persons receiving any goods or persons out of the same, and all persons going on board any such ship or vessels, shall be subject to such orders, rules, and directions concerning quarantine and the preventing infection, as shall be made from time to time by the lord lieutenant or other chief governor or governors of Ireland in council, and shall be notified by proclamation as aforesaid, in pursuance of the provisions contained in this act; and that the publication in the Dublin Gazette of any order or orders of the lord lieutenant or other chief governor or governors and council, made in pursuance of this act, shall be deemed and taken to be sufficient notice to all persons concerned, of all matters contained in any such order or orders respectively.

Goods and vessels herein described, subject to quarantine.

5. And whereas certain sorts of goods and merchandize are more especially liable to retain infection, and may be brought from places infected into other countries, and from thence imported into the united kingdom or the islands aforesaid; be it enacted, that all such goods and merchandize as shall be particularly specified for that purpose in any order or orders made by his majesty, his heirs or successors, in council, concerning quarantine and the prevention of infection as aforesaid, which shall be brought or imported into any port or place in the united

kingdom or the islands aforesaid, from any foreign country <sup>6 G. 4, c. 73.</sup> or place, in any vessel whatever, and the vessels in which the same shall be brought, and also all vessels which shall arrive from any port or place whatever under any alarming or suspicious circumstances as to infection, shall be subject and liable to such regulations and restrictions as shall be made by such order or orders of his majesty, his heirs or successors, in council as aforesaid, respecting the same.

6. That it shall and may be lawful for the lords and others of his majesty's privy council, or any two or more of them, to make such order as they shall see necessary and expedient upon any unforeseen emergency, or in any particular case or cases, with respect to any vessel arriving and having any infectious disease or distemper on board, or on board of which any infectious disease or distemper may have appeared in the course of the voyage, or arriving under any other alarming or suspicious circumstances as to infection, although such vessel shall not have come from any place from which his majesty, his heirs or successors, by and with the advice of his privy council, may have adjudged and declared it probable that the plague or any such infectious disease or distemper may be brought, and also with respect to the persons, goods, wares and merchandize, and other articles as aforesaid on board the same; and in case of any infectious disease or distemper appearing or breaking out in the united kingdom or the islands aforesaid, to make such orders, and give such direction, in order to cut off all communication between any persons infected with any such disease or distemper, and the rest of his majesty's subjects, as shall appear to the said lords or others of his majesty's privy council, or any two or more of them, to be necessary and expedient for that purpose, and likewise to make such orders as they shall see fit, for shortening the time of quarantine to be performed by particular vessels, or particular persons, goods, wares, merchandize, or any other articles, or for absolutely or conditionally releasing them or any of them from quarantine; and all such orders so made by the lords or others of the privy council, or any two or more of them as aforesaid, shall be as good, valid, and effectual, to all intents and purposes, as well with respect to the commander, master, or other person having the charge of any vessel, and all other persons on board the same, as with respect to any other persons having any intercourse or communication with them, and to the penalties, forfeitures, and punishments to which they may respectively become liable, as any order or orders made by his majesty, his heirs or successors, by and with the advice of his or their privy council, concerning quarantine, notified by proclamation or published in the London Gazette,

Privy council may, upon emergency, make such orders as herein mentioned.

17. That if any commander, master, or other person having charge of any vessel liable to perform quarantine, and on board of which the plague or other infectious disease or distemper, shall not then have appeared, shall himself quit, or shall know-

Master quitting vessel before quarantine performed;



16. 4. 74.

or not re-  
moving ves-  
sel to quaran-  
tine station ;

Penalty.

Passenger  
&c., quitting  
vessel before  
quarantine  
performed ;  
compellable  
to return, and  
liable to fine  
and im-  
prisonment.

Officers  
embezzling  
goods per-  
forming qua-  
rantine, or  
neglecting  
duty ; inca-  
pacitated  
and fined.

Officer de-  
serting his  
duty ; or  
permitting  
goods &c.  
improperly  
to be taken  
out of qua-  
rantine, or  
giving false  
certificate ;  
felony.

ingly permit or suffer any seaman or passenger coming in such vessel to quit such vessel, by going on shore, or by going on board any other vessel or boat, before such quarantine shall be fully performed, unless by such licence as shall be granted by virtue of any order in council to be made concerning quarantine as aforesaid ; or in case any commander or other person having charge of such vessel shall not, within a convenient time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed into the place or places appointed for such vessel and lading to perform quarantine ; then and in every such case, every such commander, master, or other person aforesaid, for every such offence shall forfeit and pay the sum of four hundred pounds ; and if any such person coming in any such vessel liable to quarantine, (or any pilot or other person going on board the same, either before or after the arrival of such vessel at any port or place in the united kingdom or the islands aforesaid,) shall, either before or after such arrival, quit such vessel, unless by such licence as aforesaid, by going on shore in any port or place in the united kingdom or the islands aforesaid, or by going on board any other vessel or boat with intent to go on shore as aforesaid, before such vessel so liable to quarantine as aforesaid shall be regularly discharged from the performance thereof, it shall and may be lawful for any person whatsoever by any kind of necessary force to compel such pilot or other person so quitting such vessel so liable to quarantine, to return on board the same ; and every such pilot or other person so quitting such vessel so liable to quarantine shall, for every such offence, suffer imprisonment for the space of six months, and shall forfeit and pay the sum of three hundred pounds.

21. That if any officer of his majesty's customs, or any other officer or person whatsoever, to whom it doth or shall appertain to execute any order or orders made or to be made concerning quarantine or the prevention of infection, and notified as aforesaid, or to see the same put in execution, shall knowingly and wilfully embezzle any goods or articles performing quarantine, or be guilty of any other breach or neglect of his duty in respect of the vessels, persons, goods, or articles performing quarantine ; every such officer or person so offending shall forfeit such office or employment as he may be possessed of, and shall become from thence incapable to hold or enjoy the same, or to take a new grant thereof ; and every such officer and person shall forfeit and pay the sum of two hundred pounds ; and if any such officer or person shall desert from his duty when employed as aforesaid, or shall knowingly and willingly permit any person, vessel, goods, or merchandize to depart or be conveyed out of the said lazaret vessel or other place as aforesaid, unless by permission under an order of his majesty, by and with the advice of his privy council, or under an order of two or more of the lords or others of his privy council ; or if any person hereby authorized and directed to give a certificate of a vessel having duly per-

formed quarantine or airing, shall knowingly give a false certificate thereof; every such person so offending shall be guilty of felony; and if any such officer or person shall knowingly or wilfully damage any goods performing quarantine under his direction, he shall be liable to pay one hundred pounds damages, and full costs of suit, to the owner of the same.

6 G. 4, c. 78

Officer damaging goods performing quarantine.

25. That if any person shall knowingly or wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged or counterfeited, interlined, erased, or altered, any certificate directed or required to be granted by any order of his majesty, his heirs or successors, in council, now in force or hereafter to be made touching quarantine; or shall publish any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same to be forged or counterfeited, interlined, erased, or altered, or shall knowingly and wilfully utter and publish any such certificate, with intent to obtain the effect of a true certificate to be given thereto, knowing the contents of such certificate to be false, he or she shall be guilty of felony.

Forging or uttering false certificates; felony.

28. That the consuls and vice-consuls of his majesty, his heirs and successors, shall and are hereby empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside.

Consuls &c. may administer oaths.

29. That in all cases wherein, by virtue of this act or any other act hereafter to be made touching quarantine, any examination or answer shall be taken or made upon oath, the person who shall be authorized and required to take such examinations and answers, shall and may be deemed to have full power and authority to administer such oaths. And if any person who shall be interrogated or examined, shall wilfully swear falsely to any matter concerning which such person shall depose or make oath on such examination, or in such answer, or if any person shall procure any other person so to do; he or she so swearing falsely, or procuring any other person so to do, shall be deemed to have been guilty of, and shall be liable to be prosecuted for perjury or subornation of perjury, as the case may be, and shall suffer the pains, penalties, and punishments of the law in such case respectively made and provided.

Persons authorized to take examinations may administer oaths.

False swearing; perjury.

30. [*Superintendents of quarantine at the ports may be appointed by the commissioners of customs; and, in case of absence or sickness, their duties may be performed by an authorized officer of customs.*]

31. That the publication in the London Gazette of any order in council, or of any order by any two or more of the lords or others of his majesty's privy council, made in pursuance of this act, or his majesty's royal proclamation made in pursuance of the same, shall be deemed and taken to be sufficient notice to all persons concerned of all matters therein respectively contained.

Gazette notice, sufficient.

6 G. 4, c. 78.

How far the answers of ship-masters shall be evidence.

How far the direction to perform quarantine, shall be evidence of liability.

The act of performing quarantine, shall be evidence of liability.

36. That in any prosecution, suit, or other proceedings against any person or persons whatsoever, for any offence against this act or any act which may hereafter be passed concerning quarantine, or for any breach or disobedience of any order or orders which shall be made by his majesty, his heirs or successors, with the advice of his privy council, concerning quarantine and the prevention of infection, and notified or published as aforesaid, or of any order or orders made by two or more of the lords or others of the privy council aforesaid, the answer or answers of the commander, master, or other person having charge of any vessel, to any question or interrogatories put to him by virtue and in pursuance of this act, or of any act which may hereafter be passed concerning quarantine, or of any such order or orders as aforesaid, may and shall be given and received as evidence, so far as the same relates or relate to the place from which such vessel shall come, or to the place or places at which such vessel touched in the course of the voyage. And where any vessel shall have been directed to perform quarantine by the superintendent of quarantine or his assistant, or, where there is no such superintendent or assistant, by the principal officer of the customs at any port or place, or other officer of the customs authorized to act in that behalf, the having been so directed to perform quarantine may and shall be given and received as evidence that such vessel was liable to quarantine, unless satisfactory proof shall be produced by the defendant in any such prosecution, suit, or other proceeding, to show that the vessel did not come from, or touch at any such place or places as is or are stated in the said answer or answers, or that such vessel, although directed to perform quarantine, was not liable to the performance thereof. And where any such vessel shall have in fact been put under quarantine at any port or place by the superintendent of quarantine or his assistant, or other officer of the customs authorized as aforesaid to act in that behalf, and shall actually be performing the same, such vessel shall, in any prosecution, suit, or other proceeding against any person or persons whatever, for any offence against this act or any other act which may hereafter be passed concerning quarantine and the prevention of infection, or any order or orders which shall be made by his majesty in council or any two or more of the lords or others of his privy council as aforesaid, be deemed and taken to be liable to quarantine, without proving in what manner, or from what circumstance such vessel became liable to the performance thereof.

9 Geo. 4, c. 21 (a), s. 1.—Whereas it is necessary to make provision respecting the carriage of passengers from the united

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(a) Entitled, "*An act to regulate the carriage of passengers in merchant vessels from the united kingdom to the continent and islands of North America.*"

4 & 5 Will. 4, c. 35, s. 8.—That any person or persons requiring or compelling any apprentice or person of any description to ascend a chimney-flue for the purpose of extinguishing fire therein, shall be held and adjudged to be guilty of a misdemeanor, and be liable to be proceeded against accordingly.

4 & 5 W. 4, c.  
35

Compelling any person to ascend a flue to extinguish a fire; misdemeanor.

5 & 6 Will. 4, c. 19, s. 40.—And whereas great mischiefs have arisen from masters of merchant ships leaving seamen in foreign parts, who have been thus reduced to distress, and thereby tempted to become pirates, or otherwise misconduct themselves, and it is expedient to amend and enlarge the law in this behalf: be it therefore &c., that if any master of a ship belonging to any subject of the united kingdom, shall force on shore, and leave behind, or shall otherwise wilfully and wrongfully leave behind on shore or at sea, in any place in or out of his majesty's dominions, any person belonging to his crew, before the return to or arrival of such ship in the united kingdom, or before the completion of the voyage or voyages for which such person shall have been engaged, whether such person shall have formed part of the original crew or not; every person so offending shall be deemed guilty of a misdemeanor, and shall suffer such punishment by fine or imprisonment, or both, as to the court before which he shall be convicted shall seem meet; and the said offence may be prosecuted by information, at the suit of the attorney-general on behalf of his majesty, or by indictment or other proceeding in any court having criminal jurisdiction in his majesty's dominions at home or abroad, where such master or other person as aforesaid shall happen to be, although the place where the offence may be therein averred to have been committed (which averment is hereby required to be substantially according to the fact) shall appear to be out of the ordinary local jurisdiction of such court; and such court is hereby authorized to issue a commission or commissions for the examination of any witnesses who may be absent, or out of the jurisdiction of the court; and at the trial, the depositions taken under such commission or commissions, if such witnesses shall be then absent, shall be received in evidence.

Shipmaster leaving any of his crew behind; misdemeanor.

6 & 7 Will. 4, c. 79, s. 61. [*That if any fire or light, caused by any kiln, factory, furnace, forge, chimney, building, or other work, shall be liable to be mistaken at sea for a light-house, and effectual means shall not, within a reasonable time after notice to that effect from the ballast corporation in Ireland, be taken by the owner, or caretaker, or manager, to prevent such mistake; every such person shall be deemed guilty of a common nuisance, and shall be subject to a penalty of £10, in addition to the other penalties for a nuisance. If persevered in for seven days after penalty adjudged, the commissioners may cause it to be abated, and levy the expense upon the defaulters.*]

## SECTION 2.

## Gaming.

All lotteries  
and gaming  
tables;  
public  
nuisances.

6 *Anne. c. 17, s. 1.* [*Recites the inefficacy of 10 Will. 3, c. 11: and the mischievous effects of excessive gaming*] for remedy whereof, be it declared and enacted by &c., that all publick lotteries and gaming tables, and all other lotteries and gaming tables that shall be kept in any publick houses in any city, town corporate, or place within this kingdom, (other than the groom-porter's table, to be kept within the walls of her majesty's castle of Dublin. or other house in which the chief governor or governors for the time being shall reside, during the time such chief governor or governors shall actually reside therein, and no longer,) are and shall be deemed, taken, and adjudged to be common and publick nuisances; and that all grants, patents, and licences for such lotteries and gaming tables are void and against law, and shall be so deemed, taken, and adjudged.

Information  
to be in ten  
days.

3. (*pars.*) Provided that every information concerning offences mentioned in this act, be within ten days after the offence committed.

Winning at  
cards &c, by  
ill practice,  
or winning  
above ten  
pounds at one  
sitting; for-  
feiture of five  
times the  
winnings;  
and, in for-  
mer case,  
deemed infam-  
ous, and  
punished as  
for perjury.

11 *Anne, c. 5, s. 4.* —That if any person or persons whatsoever, at any time or times after the said first day of November (1711) do or shall, by any fraud or shift, cousemage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, or any the games aforesaid (*a*), or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play as aforesaid, win, obtain, or acquire to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever, or shall at any time within the space of twenty-four hours, or any one meeting or sitting, win of any one or more person or persons whatsoever above the sum or value of ten pounds; that then every person or persons so winning by such ill practices as aforesaid, or winning at any one time or sitting as aforesaid above the said sum or value of ten pounds, and being convicted of any of the said offences upon an indictment or information, to be exhibited against him or them for that purpose, shall forfeit five times the value of the sum or sums of money, or other thing so won as aforesaid; and in case of such ill practice aforesaid, shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; and such penalty to be recovered by such person or persons as shall sue for the same by such action as aforesaid.

11 *Anne, c. 6, s. 1.* —Whereas many evil disposed persons have of late set up many mischievous and unlawful games called lotteries, not only in the city of Dublin but in other parts of this kingdom, and by setting up to sale by way of lottery several goods and other merchandizes at unreasonable and excessive

(*a*) Viz. "Cards, dice, tables, tennis, bowls, or other game or games whatsoever."—*s. 1.*

rates, thereby most unjustly and fraudulently got to themselves great sums of money from the children and servants of several gentlemen, traders, and merchants, and from many unwary persons, to the great impoverishment of the merchants and fair traders of this kingdom ; for remedy whereof, be it &c., that from and after the first day of November (1711,) all lotteries shall be deemed, adjudged, and taken to be public nuisances ; and that from and after the said first day of November (1711,) no person or persons whatsoever shall publicly or privately exercise, keep open, shew, or expose to be plaid at, drawn at, or thrown at, or shew, draw, play, or throw at any such lottery, or any other lottery, either by dice, lotts, cards, balls, or any other numbers of figures, or any other way whatsoever.

11 Ann, c. 5.

All lotteries, nuisances,

2. That every person or persons, that shall after the said first day of November (1711,) exercise, expose, open, or shew to be plaid, thrown, or drawn at, any such lottery, play, or device, or other lottery, shall forfeit for every such offence the sum of one hundred pounds, to be recovered by information, bill, plaint, or action at law, in any of her majesty's four courts at Dublin, wherein no essoign, wager of law, or any more than one imparlance shall be allowed ; one third part thereof to the use of her majesty, her heirs and successors ; one other third part thereof to the use of the poor of the parish where such offence shall be committed ; and the other third part thereof, together with double costs, to the party that shall inform and sue for the same ; and the said parties so offending shall likewise be prosecuted as common cheats, according to the statutes in that case made and provided.

Lottery keepers shall be liable to a penalty, and to prosecution as cheats.

3. [*Persons playing at such lotteries, shall forfeit ten pounds, which shall be recoverable and applicable as in last section.*]

4. Provided, that no person, who shall be prosecuted by virtue of this act for any the offences herein mentioned, shall be prosecuted for the same by virtue of any other act of parliament whatsoever.

Persons prosecuted under this act, not to be prosecuted under any other.

13 Geo. 2, c. 8, s. 10, [*and 11 Anne, c. 5, s. 10.*]  
— Provided always, and be it hereby enacted and declared by the authority aforesaid, that nothing in this act, or in any former acts against gaming contained, shall extend to prevent or hinder any person or persons from gaming or playing at any of the games, in this or in any of the said former acts mentioned, within the precincts of his majesty's castle of Dublin, or other house in which the chief governor or governors of this kingdom for the time being shall reside, during the time such chief governor or governors shall actually reside therein, and no longer (a).

Not to hinder gaming in Dublin Castle during the residence of the chief governor.

(a) For the punishment of assaults on account of money won at play, see *ante*, p. 89.



## SECTION 3.

*Offences relating to Game.*

Destroying  
game or  
rabbits by  
night.

First offence.

Second  
offence.

9 Geo. 4, c. 69 (a), s. 1.—Whereas an act was passed in the fifty-seventh year of the reign of his late majesty king George the third, intituled, “an act for prevention of persons going armed by night for the destruction of game; and for repealing an act made in the last session of parliament, relating to rogues and vagabonds;” and whereas the practice of going out by night for the purpose of destroying game has nevertheless very much increased of late years, and has in very many instances led to the commission of murder, and of other grievous offences; and it is expedient to repeal the said recited act, and to make more effectual provisions than now by law exist for repressing such practice: may it please &c., and be it &c., that the said recited act shall be, and the same is hereby repealed, except so far as the same repeals any other acts: and if any person shall, after the passing of this act, by night, unlawfully take or destroy any game or rabbits in any land, whether open or enclosed, or shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game; such offender shall, upon conviction thereof before two justices of the peace, be committed for the first offence to the common gaol or house of correction for any period not exceeding three calendar months, there to be kept to hard labour, and at the expiration of such period, shall find sureties by recognizance, or in Scotland by bond of caution, himself in ten pounds, and two sureties in five pounds each, or one surety in ten pounds, for his not so offending again for the space of one year next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found: and in case such person shall so offend a second time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction for any period not exceeding six calendar months, there to be kept to hard labour, and at the expiration of such period, shall find sureties by recognizance or bond as aforesaid, himself in twenty pounds, and two sureties in ten pounds each, or one surety in twenty pounds, for his not so offending again for the space of two years next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard

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(a) Entitled, “*An act for the more effectual prevention of persons going armed by night for the destruction of game.*”

labour for the space of one year, unless such sureties are sooner found : and in case such person shall so offend a third time, he shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years ; and in Scotland, if any person shall so offend a first, second, or third time, he shall be liable to be punished in like manner as is hereby provided in each case.

9 Geo. 4. c. 69.

Third offence; misdemeanor.

2. That where any person shall be found upon any land, committing any such offence as is hereinbefore mentioned, it shall be lawful for the owner or occupier of such land, or for any person having a right or reputed right of free warren or free chase thereon, or for the lord of the manor or reputed manor wherein such land may be situate, and also for any game-keeper or servant of any of the persons herein mentioned, or any person assisting such game-keeper or servant, to seize and apprehend such offender upon such land, or, in case of pursuit being made, in any other place to which he may have escaped therefrom, and to deliver him as soon as may be, into the custody of a peace officer, in order to his being conveyed before two justices of the peace ; and in case such offender shall assault or offer any violence with any gun, cross-bow, fire-arms, bludgeon, stick, club, or any other offensive weapon whatsoever, towards any person hereby authorized to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years ; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner.

Landowners, &c. may arrest offenders

Assaults by such offenders; misdemeanor.

4. That the prosecution for every offence punishable upon summary conviction by virtue of this act, shall be commenced within six calendar months after the commission of the offence ; and the prosecution for every offence punishable upon indictment, or otherwise than upon summary conviction, by virtue of this act, shall be commenced within twelve calendar months after the commission of such offence.

Limitation of prosecution.

8. That on every conviction under this act for a first or second offence, the convicting justices shall return the same to the next quarter sessions for the county, riding, division, city, or place wherein such offence shall have been committed ; and the record of such conviction, or any copy thereof, shall be evidence in any prosecution to be instituted against the party thereby convicted, for a second or third offence ; and the clerk of the peace shall, immediately on such return, make or cause to be made a memorandum of such conviction, in a register to be kept by him of the names and places of abode of the persons

Convictions to be registered at quarter sessions ; and shall be evidence on trial for subsequent offences.



so convicted, and shall state whether such conviction be the first or second conviction of the offending party.

9. That if any persons, to the number of three or more together, shall by night unlawfully enter or be in any land, whether open or enclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, cross-bow, fire-arms, bludgeon, or any other offensive weapon; each and every of such persons shall be guilty of a misdemeanor, and being convicted thereof before the justices of gaol delivery, or of the court of great sessions of the county or place in which the offence shall be committed, shall be liable, at the discretion of the court, to be transported beyond seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned and kept to hard labour for any term not exceeding three years; and in Scotland, any person so offending shall be liable to be punished in like manner.

12. Provided always, and be it enacted, that for the purposes of this act, the night shall be considered and is hereby declared to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

15. That for the purposes of this act, the word "game" shall be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game and bustards.

#### SECTION 4.

#### Vagrancy.

25 Hen. 6, c. 7. [*Recites that the sons of husbandmen and laborers had become "kearnes, evil doers, wasters, idlemen, and destructioners of the king our sovereign lord's liege people."* That the said persons from henceforward to comfort the said liege people in their husbandry, and in all other works lawful and profitable, shall be labourers and travailers upon the ground, as they were in old time, and in all other works and labours lawful and honest, according to their state; and if it fortune that any such son of husbandman, or of labourer, in time to come, do the contrary of this that is ordained and established by this present parliament, and thereof be lawfully convicted before any judge of the king, or judge of franchise, that he shall have the imprisonment of one year, and over that, he shall make fine to the king, or to the lord of the franchise, according to the discretion of the judge before whom he is convicted (a).

(a) This act has long since fallen into perfect desuetude; and may now be considered as virtually, though not expressly, repealed.

10 & 11 Car. 1, c. 16 (a). [*Recites the inconvenience of young persons of good family, without visible means of livelihood, wandering idly about the country, whereby the poor are oppressed to find them sustenance; and they themselves afterwards become lawless subjects.*] That if any person or persons after [Easter, 1635] that hath not means and abilitie of his owne, or sufficient means of support from his parents and kindred, that shall walke up and downe the countrie with their fosterers or kindred and retinue, with one or more greyhound or greyhounds or otherwise, or that shall cosher, lodge, or cesse themselves, their followers, their horses, or their greyhounds, upon the inhabitants of the countrie, or shall directly or indirectly exact meat or drink, or money from them, or shall crave any helps in such sort as the poore people dare not denie the same for fear of some scandalous rime or song to be made upon them, or some worse inconvenience to be done them; that it shall be lawfull for every justice of peace of each county within the realme of Ireland, and for the justices of assize in their severall circuits, to apprehend or cause to be apprehended all such person or persons, and him or them to binde to their loyaltie and allegiance or allegiances, or to the good behaviour, as in discretion of such justices shall seem meet; and to commit the said persons to the common gaole of the said countie, untill he or they shall find bonds, by recognizance as aforesaid, with very good sureties; which justice of the peace shall return all and every such bonds or recognizances so by him to be taken, at the next generall sessions of the peace for the said countie where the same shall be taken; and all sheriffes, bailiffes, constables, provosts, marshals, and other his majesty's loyall subjects are required to be aiding, assisting, and helpfull to every justice of the peace and justices of assize in the apprehending of the said cosherers and wandring idlers, when they shall be thereunto required, upon paine of such fine or fines to be set upon them for their neglect, as, upon conviction before the justices of the peace at their generall sessions of the peace, or before the justices of assize, at their discretion, shall be set upon them for their said default.

10 & 11 C. 1,  
c. 16.

Idle vagrants  
offending as  
herein may  
be bound to  
the good  
behaviour.

All officers to  
aid in their  
apprehension

11 & 12 Geo. 3, c. 50, s. 6.—That every man above the age of fifteen years, who shall be found begging without such licence as aforesaid (b), and who shall not wear such badge as aforesaid, exposed to public view on the back or shoulder, shall be committed to stocks by any justice of the peace authorized to

Unlicensed  
persons found  
begging shall  
be put in the  
stocks.

(a) Entitled, "An act for the suppressing of cosherers and idle wanderers."

(b) By the 4th section, the corporations recited in this act for the relief of the poor in each county, are authorized and required to grant to the helpless poor who have resided a year within their jurisdiction, badges and licenses to beg in such districts, and for such time as they shall think right. And justices of the peace shall be appointed to grant the badges and licenses.

11 & 12 Geo. 3.  
c. 30.

Old offenders  
may be in-  
dicted, and,  
on conviction  
imprisoned  
and whipped.

Female  
offenders.

act for the county, city, or town, where such person shall be found begging as aforesaid, and to be so kept in stocks for any space of time not exceeding three hours for the first offence, and for every subsequent offence, for any space of time not exceeding six hours; and every old persevering offender may be indicted and tried for such his offence, at the quarter sessions to be held for the county, city, or town where the party shall have offended, or any adjournment thereof; and if convicted of such offences by a jury, shall suffer imprisonment in the common prison of the county, city, or town, without bail or mainprize, for any space of time not exceeding two calendar months; and if, after such conviction, the person so convicted shall again offend as aforesaid; such person, being convicted as aforesaid of such new offence, before the justices at the quarter sessions held for the county where such offence shall be committed, or any adjournment thereof, may be sentenced by the said justices to be, and shall be accordingly, publicly whipped, in any market town in the said county, and shall also be again imprisoned as aforesaid, for any time not exceeding four calendar months; and so in consequence of every conviction after the first, as often as the party shall offend; and in the case of females who shall be found begging without such licence and badge as aforesaid, every such female shall be confined in any place that shall be appointed for that purpose, by any justice of the peace of that county, city, or town, for the first offence, for any space not exceeding three hours, and for every subsequent such offence, for any time not exceeding six hours; and every old and persevering such female offender shall be proceeded against at the sessions as aforesaid (a).

6 *Anne*, c. 11 (b), s. 1.—For the more effectual suppressing tories, robbers, and rapparees, and for preventing persons becoming tories, or resorting to them; be it &c., that from and

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(a) Although this statute is unrepealed, it would seem to be a hardship to enforce the parts of it which are penal, while those parts intended to be beneficial to the poor, as the granting of badges and licences to beg, have become quite obsolete. *R. v. Cullen, per Shaw, Rec. of Dub. 26th Jan. 1830. Gab. Cr. Law, 912 n.*

(b) Entitled, “*An act for explaining and amending two several acts against tories, robbers, and rapparees.*” This act was at first temporary, and allowed to expire. It was afterwards revived, with alterations, by the 9 Geo. 2, c. 6. *post* 307. By the 31 Geo. 3, c. 44, s. 2, so much of the above act of *Anne* “as relates to the presentment of loose and idle vagrants by the grand juries at the assizes, and at the general quarter sessions of the peace for the county of Dublin and county of the city of Dublin only” was revived; and the same, together with the alterations and additions made by the 9 Geo. 2, c. 6, was thereby made perpetual.

ter the twenty-ninth day of September, (1707,) all loose idle grants, and such as pretend to be Irish gentlemen, and will not work, nor betake themselves to any honest trade or livelihood, but wander about demanding victuals, and coshering from house to house amongst their fosterers, followers, and others, and also loose persons of infamous lives and characters, shall, upon the presentments of the grand juries at the assizes, and at the general quarter sessions of the peace, of the respective counties where such persons keep or frequent, and upon the warrants from the justices of assize, or justices of the peace at their respective quarter sessions, be sent to gaol, and there remain without bail or mainprize, until they shall be sent on board her majesty's fleet, or to some of her majesty's plantations in America; whither such justice or justices of the assize, and justices of the peace at their general quarter sessions respectively, are authorised to send such persons, unless they give sufficient security to be of the good behaviour.

9 Geo. 2, c. 6, s. 2.—[Recites 6 Anne, c. 11, s. 1.] which power, given to the grand juries at the general quarter sessions held for the several counties of this kingdom, hath been found to be inconvenient; and whereas there are great numbers of loose idle vagrants, and of loose persons of infamous lives and characters, in the county of the city of Dublin, and county of Dublin, to the disturbance of the peace, and annoyance of the said counties: for remedy whereof, be it enacted &c., that from and after the tenth day of May, (1736,) all loose idle vagrants and such as will not work and betake themselves to an honest livelihood, and all loose persons of infamous lives and characters, upon the presentment of the grand juries at his majesty's court of King's Bench, or the grand juries at the sessions of oyer and terminer and gaol delivery, held in the king's courts, after term, for the county of the city of Dublin or county of Dublin, who are hereby respectively impowered to make such presentments, shall, by order of the said courts, or upon warrants from any of the judges of the said court of King's Bench, or justices of the said courts of oyer and terminer and gaol delivery, or any of them, or of any justice of the peace of the county where such presentment is made, be committed to the county gaol, and there remain without bail or mainprize, until such person or persons shall be sent on board his majesty's fleet, or to some of his majesty's plantations in America; and the judges or justices of such courts respectively are hereby authorized to send such persons to his majesty's said plantations, for any term not exceeding seven years, unless they give sufficient security by recognizance to be of good behaviour, before the judges or justices of such courts respectively, or before such justice or justices of the peace of the same county where such presentment is made, and within such time as they the said judges or justices, by order of the said courts made upon such presentment, shall nominate, direct, and appoint;

6 Ann, c. 11.

Vagrants, upon presentment at assizes, may be sent to gaol until security be given, or transported.

Vagrants, upon presentment of grand juries in K. B. or of oyer and terminer in city or county of Dublin, &c. may be transported, unless security be given.

1 G. 2, c. 6.  
Breaking  
gaol, or re-  
turning from  
transportation.

Such presentments  
not to be  
made at any  
quarter sessions,  
except  
for Dublin.

Persons so  
presented  
may traverse;  
and such traverse  
may be tried the  
same term  
&c., or the  
next.

If defendant  
at large, process  
may issue against  
him; and, if  
arrested, he  
shall be committed  
unless security be  
given.

and in case such person or persons so committed to gaol shall break gaol, or be at large in any part of this kingdom, or shall return from transportation before the expiration of the term they are respectively ordered to be transported for, such person or persons shall suffer and be subject and liable to the same punishments and penalties, as vagabonds ordered to be transported at the assizes are now subject and liable to by the laws now in force in this kingdom, and shall be triable in the like manner.

3. That from and after the said tenth day of May, (1736,) it shall not be lawful for the grand jury at any general quarter sessions of the peace to be held for any county in this kingdom, (the county of the city of Dublin and county of Dublin excepted,) to make any such presentments: but that all presentments made by such grand juries (except as before excepted) and all orders and warrants grounded thereon shall be void and of no force; any law to the contrary notwithstanding.

4. And whereas a doubt hath been conceived, whether persons so presented by any grand jury can be admitted to traverse such presentments: be it enacted and declared by the authority aforesaid, that it shall and may be lawful to and for every person or persons so presented by any grand jury at the King's Bench, the assizes, sessions of oyer and terminer and gaol delivery aforesaid, and general quarter sessions of the peace for the county of the city of Dublin and county of Dublin, to traverse such presentment, if he, she, or they shall think fit; which traverse shall be tryed and determined the same term, assizes, sessions of oyer and terminer and gaol delivery, and general quarter sessions of the peace in and for the county of the city of Dublin or county of Dublin, in which such presentments are respectively made, in case the persons so presented are then in custody in the gaol of the said county, or at the next ensuing term, assizes, sessions of oyer and terminer and gaol delivery, or general quarter sessions of the peace for the counties aforesaid, according to the direction of the judge or justices before whom such presentment shall be made; and in the mean time, such person so presented and traversing shall continue in gaol without bail or mainprize, unless he or she shall give sufficient security by recognizance to be of good behaviour, before such judge, justice, or justices, as shall be for that purpose appointed by order of the court where such presentment is made; and in case the person or persons so presented shall be at large at the time of such presentment, the court shall award process to issue against him, her, or them; and if they or any of them shall be apprehended and taken upon such process, or by warrant from any justice of the peace of the county where such person or persons shall be so presented, such person or persons so apprehended shall be forthwith committed to gaol, there to remain without bail or mainprize till the next term, assizes, sessions of oyer and terminer and gaol delivery, or quarterly session, of the peace for the county of the city of Dublin or county of

Dublin, unless such person or persons so taken shall give sufficient security by recognizance to be of good behaviour before such justice or justices of the peace, as the court at the time of awarding process against him, her, or them, shall nominate and appoint for that purpose, and not otherwise; and in case such person or persons so presented and apprehended as aforesaid at the next term, assizes, sessions of oyer and terminer and gaol delivery, or general quarter sessions of the peace for the county of the city of Dublin, or county of Dublin, shall be found in gaol, and cannot then give sufficient security to be of the good behaviour, or in case of traverse, such traverse shall be found against him, her, or them, that then such person or persons shall be sent on board his majesty's fleet, or be transported to some of his majesty's plantations in America (a).

9 G. 2, c. 6.

If security not given against next term or assizes; the party to be transported.

50 Geo. 3, c. 102, s. 7.—That it shall and may be lawful for any justice of the peace in Ireland to arrest and bring before him, or cause to be arrested or brought before him, any stranger sojourning or wandering, and to examine him or her on oath respecting his or her place of abode, the place from whence he or she came, his or her manner of livelihood, and his or her object or motive for remaining or coming into the county, city, or town in which he or she shall be found; and unless he or she shall answer to the satisfaction of such magistrate, or produce sufficient security for his or her good behaviour, such magistrate shall commit him or her to gaol or the house of correction, there to remain until he or she shall find such security as aforesaid, or until he or she shall be discharged by such magistrate. Provided always, that such magistrate shall, without delay after such committal, transmit to the lord lieutenant or other chief governor or governors of Ireland for the time being, a true and faithful report of such committal, and the grounds and reasons thereof, the amount of bail required, with the examination of the prisoner, and the reasons alledged by him why he or she should not be committed, which such magistrate is required to take down in writing; in order that such person may be detained or discharged, as to the lord lieutenant or other chief governor or governors of Ireland for the time being may seem right.

Magistrates may arrest strangers and commit them, if they do not satisfactorily account for themselves.

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(a) Upon the subject of these acts a late eminent criminal lawyer (*John Mayne, Esq.*) writes as follows:—"The usual course, but unauthorized by the acts, is, to present the person as a vagrant, who is tried upon his traverse, as a matter of course. And then, if the traverse be found against him, he is ordered to give security; if found for him, he is discharged: whereas, upon presentment alone, he is entitled to be admitted to give security. If he traverse, and be a convicted vagrant, the judgment shall be transportation absolutely."—*Mayne MSS.*

## SECTION 5.

*Offences relating to Dead Bodies.*

Officiating ministers in any parish may grant permission in writing to any clergyman not of the church of Ireland, to perform burial service in such parish churchyard.

If permission withheld, the cause shall be declared in writing.

5 *Geo.* 4, c. 25, s. 2.—And whereas the easement of burial in the churchyards of Protestant churches has been long enjoyed by all classes of his majesty's subjects; but such burial may not by law be allowed, unless the burial service ordained by the liturgy of the church of Ireland as by law established shall be celebrated thereat by the rector, vicar, curate, or other officiating minister of the church of Ireland, in whose churchyard such burial shall be had, or by some person in holy orders of the church of Ireland, duly authorized by him; and whereas such minister of the church of Ireland may not by law dispense with the celebration of such service, or permit the substitution of any other service in lieu thereof; to the end thereof that all classes of his majesty's subjects may be permitted to have the said easement of burial according to the rites of the several religions professed by them: be it enacted, that from and after the passing of this act, it shall and may be lawful for the officiating minister of the church of Ireland by law established, in each and every parish in Ireland, upon application being made to him in writing by any clergyman or minister of any church or congregation, not being of the established church of Ireland, duly authorized by law to officiate in such church or congregation, stating the death of any member or members of such church or congregation, for permission to perform the burial service at the grave of such person or persons in the churchyard of such parish, according to the rites of such church or congregation, to grant permission accordingly. Provided always, that such permission for the performance of such burial service at the grave, according to the rites of such church or congregation, shall be in writing: and that in order to prevent any interruption of, or interference with the celebration of any of the rites of the church of Ireland by law established, such interment and service shall be had and celebrated at such time only as shall be appointed in such permission by such officiating minister of the church of Ireland.

3. That if such permission shall in any case be withheld, the cause of withholding the same shall be specially and distinctly declared in writing by such officiating minister of the church of Ireland, one part of which written declaration shall forthwith be delivered to the person making such application as aforesaid, and one other part thereof shall be forthwith transmitted to the bishop of the diocese in which such churchyard shall be situated, and shall be by him transmitted forthwith, signed by the register of such diocese, to the lord lieutenant or other chief governor or governors of Ireland.

4. That it shall not be necessary for such officiating minister of the church of Ireland to celebrate, nor shall he celebrate the burial service ordained by the liturgy of the church of Ireland as by law established, at the interment of any person not being of the established church of Ireland, unless at the desire of the person so applying, at the interment of such person, specified in the application and permission; any law, canon, or usage to the contrary notwithstanding.

5 G. 4, c. 25.

Protestant minister, unless requested, shall not perform burial service.

5. That if, after such permission granted as aforesaid, any person or persons shall obstruct or interrupt the performance of the said burial service at the grave of the person specified in such permission, such person or persons so obstructing or interrupting shall be deemed guilty of a misdemeanor, and shall be liable to be prosecuted therefor.

Obstructing burial service after such permission; misdemeanor.

2 & 3 Will. 4, c. 75 (a), s. 1.—[*The home secretary, in and for England, and the chief secretary, in and for Ireland, may grant license to practise anatomy*] to any fellow or member of any college of physicians or surgeons, or to any graduate or licentiate in medicine, or to any person lawfully qualified to practise medicine in any part of the united kingdom, or to any professor or teacher of anatomy, medicine, or surgery, or to any student attending any school of anatomy, on application from such party for such purpose, countersigned by two of his majesty's justices of the peace acting for the county, city, borough, or place wherein such party resides, certifying that, to their knowledge or belief, such party so applying is about to carry on the practice of anatomy.

Chief secretary may grant license to practise anatomy.

2. [*Such secretaries may appoint inspectors of anatomical schools, who shall continue in office for one year, or until removed, or another appointed in their place.*]

3. [*Such secretaries shall also appoint the district and schools over which such inspectors shall preside, and shall direct how their duties shall be performed.*]

4. That every inspector to be appointed by virtue of this act, shall make a quarterly return to the said secretary of state or chief secretary, as the case may be, of every deceased person's body that, during the preceding quarter, has been removed for anatomical examination to every separate place in his district where anatomy is carried on, distinguishing the sex, and, as far as is known at the time, the name and age of each person whose body was so removed as aforesaid.

Inspectors to make returns of subjects examined.

5. [*Inspectors may visit places where they have had notice that it is intended to practise anatomy.*]

7. That it shall be lawful for any executor, or other party having lawful possession of the body of any deceased person, and not being an undertaker or other party entrusted with the

Executors &c. may allow bodies to be examined,

(a) Entitled, "*An act for regulating schools of anatomy.*"



2 & 3 W. 4,  
c. 75.

unless it be  
contrary to  
the wish of  
the deceased,  
or his known  
relations.

If any per-  
son, during  
life, direct a  
post mortem  
examination  
of his body,  
the same  
shall take  
place, unless  
prevented by  
surviving  
next of kin.

The body not  
to be re-  
moved for  
such exami-  
nation, with-  
out a certifi-  
cate.

Medical  
practitioners  
may receive  
bodies for

body for the purpose only of interment, to permit the body of such deceased person to undergo anatomical examination, unless, to the knowledge of such executor or other party, such person shall have expressed his desire, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, that his body after death might not undergo such examination, or unless the surviving husband or wife, or any known relative of the deceased person, shall require the body to be interred without such examination.

8. That if any person, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, shall direct that his body after death be examined anatomically, or shall nominate any party by this act authorized to examine bodies anatomically to make such examination, and if, before the burial of the body of such person, such direction or nomination shall be made known to the party having lawful possession of the dead body; then such last mentioned party shall direct such examination to be made, and in case of any such nomination as aforesaid, shall request and permit any party so authorised and nominated as aforesaid to make such examination, unless the deceased person's surviving husband or wife, or nearest known relative, or any one or more of such person's nearest known relatives, being of kin in the same degree, shall require the body to be interred without such examination.

9. Provided always, and be it enacted, that in no case shall the body of any person be removed for anatomical examination, from any place where such person may have died, until after forty-eight hours from the time of such person's decease, nor until after twenty-four hours' notice, to be reckoned from the time of such decease, to the inspector of the district, of the intended removal of the body, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary residing at or near the place of death; nor unless a certificate, stating in what manner such person came by his death, shall, previously to the removal of the body, have been signed by the physician, surgeon, or apothecary who attended such person during the illness whereof he died, or, if no such medical man attended such person during such illness, then by some physician, surgeon, or apothecary who shall be called in after the death of such person to view his body, and who shall state the manner or cause of death according to the best of his knowledge and belief, but who shall not be concerned in examining the body after removal; and that in case of such removal, such certificate shall be delivered, together with the body, to the party receiving the same for anatomical examination.

10. That it shall be lawful for any member or fellow of any college of physicians or surgeons, or any graduate or licentiate in medicine, or any person lawfully qualified to practise medicine

in any part of the united kingdom, or any professor, teacher, or student of anatomy, medicine, or surgery, having a license from his majesty's principal secretary of state or chief secretary as aforesaid, to receive or possess for anatomical examination, or to examine anatomically, the body of any person deceased, if permitted or directed so to do by a party who had, at the time of giving such permission or direction, lawful possession of the body, and who had power, in pursuance of the provisions of this act, to permit or cause the body to be so examined; and provided such certificate as aforesaid were delivered by such party together with the body.

2 & 3 W. 4,  
c. 75.

anatomical  
examina-  
tion.

11. That every party so receiving a body for anatomical examination, after removal shall demand and receive, together with the body, a certificate as aforesaid, and shall, within twenty-four hours next after such removal, transmit to the inspector of the district such certificate, and also a return stating at what day and hour and from whom the body was received, the date and place of death, the sex, and (as far as is known at the time) the christian and surname, age, and last place of abode of such person, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary residing at or near the place to which the body is removed, and shall enter or cause to be entered the aforesaid particulars relating thereto, and a copy of the certificate he received therewith, in a book to be kept by him for that purpose, and shall produce such book whenever required so to do by any inspector so appointed as aforesaid.

Persons so receiving bodies shall also obtain a certificate, which they shall transmit to the inspector of the district.

12. That it shall not be lawful for any party to carry on or teach anatomy at any place, or at any place to receive or possess for anatomical examination, or examine anatomically, any deceased person's body after removal of the same, unless such party, or the owner or occupier of such place, or some party by this act authorised to examine bodies anatomically, shall, at least one week before the first receipt or possession of a body for such purpose at such place, have given notice to the said secretary of state or chief secretary, as the case may be, of the place where it is intended to practise anatomy.

Notice to be given to the chief secretary of the places where anatomy is about to be practised.

13. Provided always, and be it enacted, that every such body so removed as aforesaid for the purpose of examination shall, before such removal, be placed in a decent coffin or shell, and be removed therein; and that the party removing the same, or causing the same to be removed as aforesaid, shall make provision that such body, after undergoing anatomical examination, be decently interred in consecrated ground, or in some public burial ground in use for persons of that religious persuasion to which the person whose body was so removed belonged; and that a certificate of the interment of such body shall be transmitted to the inspector of the district, within six weeks after the day on which such body was received as aforesaid.

Bodies shall be removed in a coffin; and, after examination, interred.

14. That no member or fellow of any college of physicians or

Persons, as

2 & 3 W. 4,  
c. 75.

herein, not  
punishable  
for having  
human  
subjects.

Post mortem  
examina-  
tion, by legal  
authority,  
not prohi-  
bited.

Offenders  
against this  
act, guilty  
of a misde-  
meanor.

Explanation  
of terms.

surgeons, nor any graduate or licentiate in medicine, nor any person lawfully qualified to practise medicine in any part of the united kingdom, nor any professor, teacher, or student of anatomy, medicine, or surgery, having a license from his majesty's principal secretary of state or chief secretary as aforesaid, shall be liable to any prosecution, penalty, forfeiture, or punishment, for receiving or having in his possession for anatomical examination, or for examining anatomically, any dead human body, according to the provisions of this act.

15. That nothing in this act contained shall be construed to extend to, or to prohibit any post-mortem examination of any human body required or directed to be made by any competent legal authority.

18. (*pars.*)—That any person offending against the provisions of this act in England or Ireland, shall be deemed and taken to be guilty of a misdemeanor; and, being duly convicted thereof, shall be punished by imprisonment for a term not exceeding three months, or by a fine not exceeding fifty pounds, at the discretion of the court before which he shall be tried.

19. And, in order to remove doubts as to the meaning of certain words in this act, be it enacted, that the words "person" and "party" shall be respectively deemed to include any number of persons, or any society, whether by charter or otherwise; and that the meaning of the aforesaid words shall not be restricted, although the same may be subsequently referred to in the singular number and masculine gender only.

## SECTION 6.

### Offences relating to Marriage.

Degraded  
Protestant  
clergymen  
celebrating

12 Geo. 1, c. 3 (a), s. 1.—Whereas clandestine marriages are for the most part celebrated by popish priests and degraded clergymen, to the manifest ruin of several families within this kingdom; for remedy whereof, be it enacted &c., that if any *popish priest, or reputed popish priest, or person pretending to be a popish priest, or any degraded clergyman, or any layman*

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(a) Entitled, "*An act to prevent marriages by degraded clergymen and popish priests, and for preventing marriages consummated from being avoided by precontracts, and for the more effectual punishment of bigamy.*"

pretending to be a clergyman of the church of Ireland as by law established, shall, after the twenty-fifth day of April, (1726,) celebrate, or take upon him to celebrate any marriage between two protestants, or reputed protestants, or between a protestant or reputed protestant and a papist, *such popish priest, or reputed popish priest, and* such degraded clergyman, and layman, pretending to be a clergyman, shall be, and is hereby declared to be guilty of felony, and shall suffer death as a felon without benefit of the clergy or of the statute.

12 G. 1, c. 3.

certain marriages; felony, death.

2. And for the better discovering and convicting such offenders, be it further &c., that it shall and may be lawful to and for any two justices of the peace in their respective counties, by warrant or warrants under their hands and seals, directed to any constable or constables, to summon any person or persons suspected to be married by such *popish priest or degraded clergyman, or layman* pretending to be a clergyman of the church of Ireland as by law established, or to have been present at the celebration of such marriage, to appear before such justices at the time and place in such warrant mentioned, not being more than ten miles distant from his, her, or their usual place of abode, and to examine such person or persons upon oath, where, and by what person or persons, and with what form and ceremonies such marriage was celebrated, and what religion the person or persons so married professed, and who were present at such marriage: and if the person or persons so summoned shall neglect or refuse to appear according to such summons, or shall refuse to be examined as aforesaid, or after examination shall refuse to enter into a recognizance to prosecute at the next assizes such person or persons as shall appear by such examination to have offended contrary to the true intent and meaning of this act, such person or persons so refusing or neglecting to appear, having no lawful impediment, or refusing to be examined and answer, or after examination refusing to enter into recognizance as aforesaid, shall be committed by the said justices to the common gaol of the said county, there to remain without bail or mainprize for the space of three years, unless he, she, or they shall sooner submit to be examined as aforesaid before the said justices of the peace, or one of them, or, in case of their absence or refusal, before some other justice of the peace for the said county; and shall enter into a recognizance to appear at the next general assizes to be held for the county where the offence was committed, to prosecute such person or persons as shall appear by such examination to have offended contrary to the true intent and meaning of this act; in which case it shall and may be lawful to and for such justice of the peace, by warrant under his hand and seal, directed to the gaoler or keeper of the said gaol, to deliver and discharge such person or persons out of the said gaol, and from his, her, or their commitment as aforesaid.

Two justices may summon and examine persons suspected to have been so married, or to have been present.

Refusing to appear, be examined, or be bound to prosecute; imprisonment for three years.

12 G. 1, c. 3.

Such examination shall not subject the party to any penalty, except for perjury.

A marriage consummated shall not be avoided by a precontract not consummated.

Marriages, where one of the parties is under age, without consent as herein; void.

Person of full age marrying one under age, entitled as herein; shall

3. Provided, that no such examination shall subject the party examined to any prosecution, penalty, or forfeiture whatsoever, or be admitted to be given in evidence against the person so examined, unless such person shall be indicted for having committed wilful perjury in such examination.

4. And whereas some doubts have arisen, whether marriages consummated by carnal knowledge can be avoided by precontracts without consummation, which has been the ground of many vexatious suits: for remedy whereof, and to prevent all doubts concerning the same for the future, be it enacted and declared, that no contract of marriage only, not consummated by the carnal knowledge of the parties, shall be of any force towards making void a subsequent marriage consummated by such carnal knowledge.

9 Geo. 2, c. 11 (a), s. 1.—Whereas the several laws made to prevent clandestine marriages have proved ineffectual; and, notwithstanding the penalties laid on those who celebrate such marriages, many persons under age who are entitled to considerable fortunes, are frequently married without the consent of their parents or guardians, to the great prejudice of many families; and protestants frequently intermarry with papists, whereby the popish interest and religion are increased and propagated: for remedy thereof, be it &c., that from and after the twenty-fifth day of March, (1737,) all marriages and matrimonial contracts, where either of the parties are under the age of twenty-one years, had without the consent of the father (if living) in writing under his hand first had and obtained, or, if dead, of the guardian had and obtained in the same manner, or of the lord chancellor or keeper of the great seal, in case no guardian be appointed, shall be absolutely null and void to all intents and purposes whatsoever, and shall not be deemed, adjudged, or construed by any spiritual court as contracts or marriages, if either of the parties marrying or contracting marriage without such consent, and being under the age of twenty-one years, be intitled to any real estate of the value of one hundred pounds per annum, or to any personal estate to the value of five hundred pounds, or if the father or mother of such party so marrying under age be in possession of any real estate of the value of one hundred pounds per annum, or of any personal estate of the value of two thousand pounds.

4. That from and after the said twenty-fifth day of March, (1737,) if any person of the full age of one and twenty years shall marry, or contract to marry any person under the said age without such consent as aforesaid, such person being of

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(a) Entitled, "An act for the more effectual preventing clandestine marriages."

full age, so marrying or contracting to marry a person under the said age, shall forfeit the sum of five hundred pounds, in case the person so married or contracted to be married, when under the age of one and twenty years, shall be possessed of or intitled unto real or personal estate of the value of ten thousand pounds; but in case the person so married, or contracted to be married, when under the age of one and twenty years, shall not be possessed of or intitled unto real or personal estate of the value of ten thousand pounds, then the person being of full age, and so marrying or contracting to marry a person under the said age, shall forfeit only the sum of two hundred pounds; which said respective sums shall be recovered by bill, plaint, or information in any of his majesty's courts of record; and one moiety of the said forfeitures shall be to the use of his majesty, and the other moiety to the use of him, her, or them who shall sue for the same; and if any person being of full age shall be legally convicted in any such suit of marrying or contracting to marry a person under the said age of twenty-one years, such person so convicted shall likewise be imprisoned in the common gaol of the county or place where such offence is committed, for the space of one year, without bail or main-prize.

9 G. 2, c. 11.  
forfeit as  
herein, and  
also be im-  
prisoned one  
year.

5. Provided always, that no such forfeiture or penalty shall be incurred, unless the prosecution be commenced within one year after the fact committed.

Prosecution  
shall be in  
one year.

19 Geo. 2, c. 13, s. 1.—Whereas the laws now in being to prevent popish priests from celebrating marriages between protestant and protestant, or between protestant and papist, have hitherto been found ineffectual: for remedy whereof, be it &c., that every marriage, that shall be celebrated after the first day of May, (1746,) between a papist and any person who hath been, or hath professed him or herself to be a protestant at any time within twelve months before such celebration of marriage, or between two protestants, if celebrated by a popish priest, shall be and is hereby declared absolutely null and void to all intents and purposes, without any process, judgment, or sentence of law whatsoever.

Marriage by  
R. C. clergy-  
man of two  
Protestants,  
or of a Pro-  
testant and  
R. Catholic,  
void.

21 & 22 Geo. 3, c. 25 (a), s. 1.—Whereas the removing any doubts that may have arisen concerning the validity of matrimonial contracts or marriages, entered into between protestant dissenters, and solemnized by protestant dissenting ministers or teachers, will tend to the peace and tranquillity of many protestant dissenters and their families; therefore be it declared and enacted by &c., that all matrimonial contracts or marriages heretofore entered into, or hereafter to be entered into between

Marriages  
between Dis-  
senter's may  
be celebrated  
by Dissent-  
ing ministers.

(a) " Entitled, " *An act for the relief of Protestant Dissenters in certain matters therein contained.*"

21 & 22 G. 3,  
c. 25.

protestant dissenters, and solemnized or celebrated by protestant dissenting ministers or teachers, shall be, and shall be held and taken to be good and valid to all intents and purposes whatsoever; and that all parties to such marriages, and all persons deriving under them, shall, in virtue of such marriages, be, and be deemed, adjudged, and taken as intitled to all rights and benefits whatsoever from, under, or in consequence of such marriages, in like manner as all his majesty's subjects of the established church, and as if the same had been solemnized by a clergyman of the church of Ireland by law established; any law, statute, custom, matter, or thing to the contrary thereof in any wise notwithstanding.

2. [*This act not to be construed in any wise contrary to the above acts passed in the reigns of Geo. 1, & Geo. 2, against clandestine marriages.*]

Marriages  
between  
Protestants  
and R. Ca-  
tholics may  
be celebrated  
by Protes-  
tant clergy-  
men.

32 Geo. 3, c. 21 (a), s. 12.—That it shall and may be lawful to and for protestants and persons professing the Roman Catholic religion to intermarry; and to and for archbishops, bishops, and all persons having lawful jurisdiction, to grant licenses for marriages to be celebrated between Protestants and persons professing the Roman Catholic religion and for clergymen of the established church, or protestant dissenting ministers, to publish the banns of marriage between such persons; and that clergymen of the established church or other protestant ministers, duly celebrating such marriages, shall not be liable to any pain, penalty, or censure for celebrating the same, any law to the contrary notwithstanding (b).

Dissenting  
and R. Ca-  
tholic clergy-  
men, not to  
marry Pro-  
testants of  
the Estab-  
lished  
Church and  
R. Catholics.

13. Provided always, that nothing herein contained shall extend, or be construed to extend to authorise Protestant dissenting ministers or popish priests to celebrate marriage between Protestants of the established church and Roman Catholics.

3 & 4 Will. 4, c. 102 (c), s. 1.—Whereas Roman Catholic


(a) Entitled, "*An act to remove certain restraints and disabilities therein mentioned, to which his majesty's subjects professing the Popish religion are now subject.*"

The mar-  
riage of a  
Protestant  
and Presby-  
terian, cele-  
brated by a  
Presbyterian  
clergyman, is  
good upon an  
indictment  
for bigamy.

(b) *Rex v. M'Laughlin. Antrim Sp. Ass. 1831.* BIGAMY.—The prisoner was of the Established Church, and his wife a Presbyterian. The marriage was celebrated by a Presbyterian clergyman. No registry was produced at the trial. The second marriage was celebrated also by a Presbyterian clergyman. Counsel for the prisoner objected that neither marriage was valid, but the objection was overruled, and the prisoner convicted.

It seems also to be the general opinion of the profession, that marriages between persons of the Established Church may be lawfully celebrated by Protestant dissenting ministers.

(c) "Entitled, "*An act to repeal certain penal enactments, made in the parliament of Ireland against Roman Catholic clergymen, for celebrating*

clergymen were, by certain acts of the parliament of Ireland, 3 & 4 W. 4, c. 102.  considered liable to punishment, pains, and penalties for celebrating marriages contrary to the provisions thereof, to which punishment, pains, and penalties, no other clergymen or ministers are liable: and whereas it is expedient to amend the law in this respect: be it therefore &c., that so much of the following acts made in the parliament of Ireland, (that is to say,) 5 Anne, c. 16; 12 Geo. 1, c. 3; 23 Geo. 2, c. 10; and 33 Geo. 2, c. 21;] as contains any penal enactment which exclusively affects a Roman Catholic clergyman celebrating marriage between any persons, knowing them or either of them at the time of such marriage to be of the Protestant religion; or as declares or enacts that any Roman Catholic clergyman who shall celebrate any marriage between two Protestants or reputed Protestants, or between a Protestant or reputed Protestant and a Roman Catholic, shall be guilty of felony, and suffer death as a felon, without benefit of clergy or of the statute; or as enacts and declares that any Roman Catholic clergyman who shall celebrate any marriage between two Protestants, or between any such Protestant and Papist, unless such Protestant and Papist shall have been first married by a clergyman of the Protestant religion, shall forfeit the sum of five hundred pounds to his majesty upon conviction thereof; shall, from and after the passing of this act, be repealed, and that so much and such parts only of the said recited acts are hereby repealed.

Certain acts repealed.

2. [*Nothing herein shall extend to any proceeding commenced before the passing of the act; nor to affect such parts of the recited acts as repeal any former acts.*]

3. [*This act shall not give validity to any marriage ceremony which is not now valid; or repeal any act for preventing the performance of the marriage ceremony by degraded clergymen.*]

10 Geo. 4, c. 34, s. 26.—That if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in Ireland or elsewhere, every such offender shall be guilty of felony; and being convicted thereof, shall be liable to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and any such offence may be dealt with, inquired of, tried, determined, and punished in the county where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that county. Provided always, that nothing herein contained shall extend to any second marriage contracted out of Ireland by any other than a subject of his majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not

Bigamy; felony, transportation.

Exceptions.



10 G. 4, c. 34

have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose marriage shall have been declared void by the sentence of any court of competent jurisdiction.

Past marriages within prohibited degrees, confirmed.

Future marriages within prohibited degrees, annulled.

5 & 6 Will. 4, c. 54, s. 1.—Whereas marriages between persons within the prohibited degrees are voidable only by sentence of the ecclesiastical court, pronounced during the life-time of both the parties thereto; and it is unreasonable that the state and condition of the children of marriages between persons within the prohibited degrees of consanguinity or affinity, should be ipso facto void, and not merely voidable. Be it &c., that all marriages which shall have been celebrated before the passing of this act [31st August, 1831] between persons being within the prohibited degrees of affinity, shall not hereafter be annulled for that cause, by any sentence of the ecclesiastical court, unless pronounced in a suit which shall be depending at the time of the passing of this act. Provided, that nothing hereinbefore enacted shall affect marriages between persons being within the prohibited degrees of consanguinity.

2. That all marriages, which shall hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity, shall be absolutely null and void to all intents and purposes whatsoever.

## SECTION 7.

### *Offences concerning Religion.*

All ministers of the established church shall use the form of common prayer.

Refusing to use the book of common prayer, or using any other, or speaking in derogation of it.

2 Eliz. c. 2, s. 2.—That all and singular ministers in any cathedrall or parish church, or other place within this realm of Ireland, shall from and after the feast of Saint John Baptist then next ensuing, bee bounden to say and use the mattens, even-song, celebration of the Lord's supper, and administration of each of the sacraments, and all their common and open prayer, in such order and form as is mentioned in the said book so authorised by parliament in the said fifth and sixth years of the raigne of king Edward the Sixth, with one alteration or addition of certain lessons to bee used in every Sunday in the year, and the forme of the litanie altered and corrected, and two sentences onely added in the delivery of the sacrament to the communicants, and none other or otherwise; and that if any manner of parson, vicar, or other whatsoever minister that ought or should sing or say common prayer mentioned in the said book, or minister the sacraments, from and after the feast of Saint John the Baptist aforesaid, refuse to use the said common prayers, or to minister the sacraments in such cathedrall or parish church, or other places, as he should use to minister the same, in such order and form as they be mentioned and set forth in the said book, or shall wilfully or obstinately (standing in the same) use any other rite, ceremony, order, form, or manner of

celebrating of the Lord's supper openly or privily, or mattens, even-song, administration of the sacraments, or other open prayers is mentioned and set forth in the said book; (open prayer in and throughout this act, is meant that prayer which is for other to come unto, to hear, either in common churches or privy chappels or oratories, commonly called the service of the church;) or shall preach, declare, or speak any thing in the derogation or depraving of the said book, or any thing therein conteyned, or of any part thereof, and shall be thereof lawfully convicted according to the lawes of this realm, by verdict of twelve men, or by his owne confession, or by the notorious evidence of the fact, shall lose and forfeit to the queene's highnesse, 2 Eliz. c. 2.  
 her heires and successors, for his first offence, the profit of all his spirituall benefices or promotions comming or arising in one whole year next after his conviction; and also the person so convicted shall, for the same offence, suffer imprisonment by the space of sixe monthes without bayl or main-prise: and if any such person, once convicted of any offence concerning the premisses, shall, after his first conviction, eftsoons offend, and be thereof in forme aforesaid lawfully convict, that then the same person shall, for his second offence, suffer imprisonment by the space of one whole year, and after, shall therefore be deprived (*ipso facto*) of all his spirituall promotions; and that it shall be lawfull to all patrons or donors of all and singular the same spirituall promotions, or any of them, to present or collate unto the same, as though the person or persons so offending were dead; and that if any such person or persons after he shall be twice convicted in the forme aforesaid, shall offend against any of the premisses the third time, and shall be thereof in forme aforesaid lawfully convicted, that then the person so offending and convicted the third time, shall be deprived (*ipso facto*) of all his spirituall promotions, and also shall suffer imprisonment during his life: and if the person that shall offend and be convict in forme aforesaid, concerning any of the premisses, shall not be beneficed, nor have any spirituall promotion, that the same person so offending and convict, shall for the first offence suffer imprisonment during one whole year next after his said conviction, without bayle or mainprise: and if any such person, not having any spirituall promotion, after his first conviction shall eftsoons offend in any thing concerning the premisses, and shall in forme aforesaid be thereof lawfully convicted, that then the same person shall, for his second offence suffer imprisonment during his life. Penalty.

3. (*pars.*)—That if any person or persons whatsoever, after the said feast of Saint John Baptist, shall, in any enterludes, playes, songs, rimes, or by other open words, declare or speake any thing in derogation, depraving, or despising of the same book, or of any thing therein conteyned, or any part thereof, or shall, by open fact, deed, or by open threatenings, compell or cause, or otherwise procure or maintaine any person, vicar, or other minister, in any cathedrall or parish church, or in chappell, Ridiculing the book of common prayer, causing other prayers to be used, or interrupting the minister.

2 Eliz. c. 2

or in any other place, to sing or say any common and open prayer, or to minister any sacrament, otherwise or in any other maner and forme then is mentioned in the said book, or that, by any of the said meanes, shall unlawfully interrupt or let any person. vicar, or other minister in any cathedrall or paroch church. chappell, or any other place to sing or say common and open prayer, or to minister the sacraments, or any of them, in such maner and forme as is mentioned in the said book; that then every such person, being thereof lawfully convicted in forme abovesaid, shall forfeit to the queen our sovereign lady, her heyres and successors, for the first offence, an hundred markes; and if any person or persons, being once convict of any such offence, eistsoones offend against any of the last recited offences, and shall in forme aforesaid be thereof lawfully convict, that then the same person, so offending and convict, shall, for the second offence, forfeyt to the queen our sovereign lady, her heires and successours, four hundred marks; and if any person, after he in forme aforesaid shall have been twice convict of any offence concerning any of the last recited offences, shall offend the third time, and be thereof in forme abovesaid lawfully convict; that then every person, so offending and convict, shall, for his third offence, forfeit to our sovereign lady the queen all his goods and chattles, and shall suffer imprisonment during his life. And if any person or persons that, for his first offence concerning the premisses, shall be convict in forme aforesaid, doe not pay the summe to be payed by vertue of his conviction, in such manner and forme as the same ought to be paied, within sixe weekes next after his conviction; that then every person, so convict and so not paying the same, shall for the same first offence, insteade of the said sum, suffer imprisonment by the space of six moneths without baille or maineprise. And if any person or persons that, for his second offence concerning the premisses, shall be convict in forme aforesaid, do not pay the said summe to be payed by vertue of his conviction and this estatute, in such manner and forme as the same ought to be payed, within six weeks next after his said second conviction; that then every person, so convicted and not so paying the same, shall for the same second offence, in the steade of the said sum, suffer imprisonment during twelve moneths without bayl or maineprise.

Offences,  
triable at  
sessions and  
assizes.

5. That all and every justices of the peace, gaol deliverie, of oyer and determiner, or justices of assise, shall have full power and authoritie, in every of their open and generall sessions, to enquire, heare, and determine all and all manner of offences, that shall be committed or done contrarie to any article conteyned in this present act, within the limits of the commission to them directed, and to make processe for the execution of the same, as they may doe against any person being indicted before them of trespasse, or lawfully convicted thereof.

The bishop  
may join

6. Provided alwayes, and be it enacted &c., that all and every archbishop and bishop shall and may, at all time and times at his

libertie and pleasure, joyne and associate himselfe, by vertue of 2 Eliz. c. 2, this act, to the said justices of the peace, goale deliverie, of oyer and determiner, or to the said justices of assise, at every of the said open and generall sessions to be holden in any place within his diocesse, for and to the enquire, hearing, and determining of the offences aforesaid.

himself to the justices, upon the trial of such offences.

8. That no person or persons shall be at any time hereafter impeached or otherwise molested of or for any of the offences above mentioned, hereafter to be committed or done contrarie to this act, unlesse hee or they so offending be thereof indicted at the next generall session to be holden before any such justices of the peace, goale deliverie, of oyer and determiner, or justices of assise, next after any offence committed or done contrarie to the tenour of this act.

Indictment shall be preferred at next sessions or assizes.

9. Provided always, and be it ordeyned and enacted by &c., that all and singular lords of the parliament, for the third offence above mentioned, shall be tryed by their peers, *before such peer of this realm of English bloud, as by the lord deputy or other governour or governours of this realm for the time being, shall be by commission appointed under the broad seal.*

Peers shall, for third offence, be tried by their peers.

10. Provided also, and be it ordayned and enacted by &c., that the mayor of Dublin, and all other mayors, baylives, and other head officers of all and singular cities, boroughes, and townes corporate within this realm, to the which justices of peace, or of gaole deliverie, or assise, do not commonly repayre, shall have full power and authoritie by vertue of this act, to enquire, heare, and determine the offences abovesaid, and everie of them, yearly within fifteen dayes after the feast of Easter and Saint Michael the Archangel, in like manner and forme as justices of the peace, gaole delivery, assise, and oyer and terminer may doe.

Corporate officers may also enquire of such offences.

11. Provided always, and be it ordayned and enacted by &c., that all and singular archbishops and bishops, and every of their chauncellours, commissaries, archdeacons, and other ordinaries, having any peculiar ecclesiasticall jurisdiction, shall have full power and authoritie by vertue of this act, as well to enquire in their visitation, synodes, and elsewhere within their jurisdictions, at any other time and place, and to take accusations and informations of all and every the things above said, done, committed, or perpetrated within the limittes of their jurisdictions and authoritie, and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and processes, in like forme as heretofore hath been used in like cases by the queen's ecclesiastical lawes.

Ordinary &c. may inquire and punish as heretofore, by the ecclesiastical laws.

12. Provided alwayes, and be it enacted, that whatsoever person offending in the premisses, shall for the offence first receive punishment of the ordinarie, having a testimonie thereof under the said ordinarie's seales, shall not for the same offence eftsoones be convicted before the justices; and likewise receiving for the said first offence punishment by the justicers, he shall not for the

Punishment shall not be inflicted by two tribunals for the same offence.

2 Eliz. c. 2.

same offence estoones receive punishment of the ordinarie; any thing conteyned in this act to the contrarie notwithstanding.

Jesuits shall deliver to the clerk of the peace, a statement of their names, ages, abodes, &c.;

a copy of which shall be transmitted to the chief secretary.

Jesuits &c. coming into the realm; misdemeanor.

Natural born subjects, being

10 Geo. 4, c. 7 (a), s. 28.—And whereas jesuits, and members of other religious orders, communities, or societies of the church of Rome, bound by monastic or religious vows, are resident within the united kingdom; and it is expedient to make provision for the gradual suppression and final prohibition of the same therein; be it therefore enacted, that every jesuit, and every member of any other religious order, community, or society of the church of Rome, bound by monastic or religious vows, who, at the time of the commencement of this act (b), shall be within the united kingdom, shall, within six calendar months after the commencement of this act, deliver to the clerk of the peace of the county or place where such person shall reside, or to his deputy, a notice or statement, in the form and containing the particulars required to be set forth in the schedule to this act annexed (c); which notice or statement such clerk of the peace, or his deputy, shall preserve and register amongst the records of such county or place, without any fee, and shall forthwith transmit a copy of such notice or statement to the chief secretary of the lord lieutenant or other chief governor or governors of Ireland, if such person shall reside in Ireland, or if in Great Britain, to one of his majesty's principal secretaries of state; and in case any person shall offend in the premises, he shall forfeit and pay to his majesty, for every calendar month during which he shall remain in the united kingdom, without having delivered such notice or statement as is hereinbefore required, the sum of fifty pounds (d).

29. That if any jesuit, or member of any such religious order, community, or society as aforesaid, shall, after the commencement of this act, come into this realm, he shall be deemed and taken to be guilty of a misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the united kingdom for the term of his natural life.

30. Provided always, and be it further enacted, that in case any natural born subject of this realm, being, at the time of the

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(a) Entitled, "*An Act for the relief of his Majesty's Roman Catholic subjects.*"

(b) Viz. the 23d of April, 1829.—s. 40.

(c) Viz. the date of the registry—name of the party—age—place of birth—name of the order, community, or society whereof he is a member—name and usual residence of the next immediate superior of the order, community, or society—and usual place of residence of the party.

(d) All penalties imposed by this act shall be recovered in Ireland, by information in the Exchequer, in the name of the attorney-general  
s. 38.

commencement of this act, a jesuit, or other member of any such religious order, community, or society as aforesaid, shall, at the time of the commencement of this act, be out of the realm, it shall be lawful for such person to return or to come into this realm; and upon such his return or coming into the realm, he is hereby required, within the space of six calendar months after his first returning or coming into the united kingdom, to deliver such notice or statement to the clerk of the peace of the county or place where he shall reside, or his deputy, for the purpose of being so registered and transmitted as hereinbefore directed; and in case any such person shall neglect or refuse so to do, he shall for such offence forfeit and pay to his majesty, for every calendar month during which he shall remain in the united kingdom without having delivered such notice or statement, the sum of fifty pounds.

10 G. 4, c. 7.  
Jesuits, may return into the kingdom, and be registered.

31. Provided also, and be it further enacted, that, notwithstanding any thing hereinbefore contained, it shall be lawful for any one of his majesty's principal secretaries of state, being a Protestant, by a licence in writing signed by him, to grant permission to any jesuit, or member of any such religious order, community, or society as aforesaid, to come into the united kingdom, and to remain therein for such period as the said secretary of state shall think proper, not exceeding in any case the space of six calendar months; and it shall also be lawful for any of his majesty's principal secretaries of state to revoke any licence so granted before the expiration of the time mentioned therein, if he shall so think fit; and if any such person, to whom such licence shall have been granted, shall not depart from the united kingdom within twenty days after the expiration of the time mentioned in such licence; or, if such licence shall have been revoked, then within twenty days after notice of such revocation shall have been given to him; every person so offending shall be deemed guilty of a misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the united kingdom, for the term of his natural life.

Secretaries of state may licence jesuits to come into the kingdom,

and may revoke the same.

Refusing to depart, after expiration or revocation of licence; misdemeanor.

33. That in case any jesuit, or member of any such religious order, community, or society as aforesaid shall, after the commencement of this act, within any part of the united kingdom, admit any person to become a regular ecclesiastic or brother, or member of any such religious order, community, or society, or be aiding or consenting thereto, or shall administer or cause to be administered, or be aiding or assisting in the administering or taking any oath, vow, or engagement purporting or intended to bind the person taking the same to the rules, ordinances, or ceremonies of such religious order, community, or society; every person offending in the premises in England or Ireland shall be deemed guilty of a misdemeanor, and in Scotland shall be punished by fine and imprisonment.

Admitting persons as members of such religious orders; misdemeanor.

10 G. 4, c. 7.

Any person  
so admitted  
a jesuit to be  
banished.

The party  
offending,  
and not  
departing,  
may be ba-  
nished by his  
majesty.

And if at  
large after  
three months  
may be  
transported  
for life.

Not to ex-  
tend to nuns.

34. That in case any person shall, after the commencement of this act, within any part of this united kingdom, be admitted or become a jesuit, or brother or member of any other such religious order, community, or society as aforesaid; such person shall be deemed and taken to be guilty of a misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the united kingdom for the term of his natural life.

35. That in case any person sentenced and ordered to be banished under the provisions of this act, shall not depart from the united kingdom within thirty days after the pronouncing of such sentence and order, it shall be lawful for his majesty to cause such person to be conveyed to such place out of the united kingdom, as his majesty, by the advice of his privy council, shall direct.

36. That if any offender, who shall be so sentenced and ordered to be banished in manner aforesaid, shall, after the end of three calendar months from the time such sentence and order hath been pronounced, be at large within any part of the united kingdom, without some lawful cause; every such offender, being so at large as aforesaid, on being thereof lawfully convicted, shall be transported to such place as shall be appointed by his majesty, for the term of his natural life.

37. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend in any manner to affect any religious order, community, or establishment consisting of females, bound by religious or monastic vows.

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#### SECTION 8.

### *Misconduct of Officers and Sale of Offices.*

Archbishop  
&c. refusing  
to consecrate

2 Eliz. c. 4 (a), s. 5.—That if any archbishop or bishop within this realm, after such collation shall be signified unto them in maner and form before rehearsed, shall refuse, and

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(a) "Entitled, "*An act for the conferring and consecrating of archbishops and bishops, within this realme.*"

By the preceding sections of this act, the writ of *congé d'elire* is abolished; and it is enacted, that the collation of archbishops and bishops shall be made by letters patent from the throne, or the lord lieutenant. After the signification of these letters patent—to an archbishop and two bishops, or to four bishops (in case of collation to an archbishoprick); and to the archbishop of the province (in case of colla-

doe not invest and consecrate with all due circumstance, as is aforesaid, every such person that shall be so conferred, and to them signified, as is above mentioned, within twenty dayes next after the queen's letters patents of such collation as shall come to their hands; or else, if any of them, or any other person or persons admit, maintaine, allow, obey, doe, or execut any censures, excommunications, interdictions, inhibitions, or any other processe or act, of what name, nature, or qualitie soever it be, to the contrarie or let of due execution of this act; that then every archbishop and bishop, and all other persons so offending and doing contrarie to this act or any part thereof, and their aidours, counsaylours, and abettours, shall runne in the dangerous paines and penalties of the estatutes of provis and premunire, made within the realm of England, in the five and twentieth year of the raign of king Edward the Third, and in the sixteenth year of king Richard the Second(a).

2 Eliz. c. 4.

bishop &c.;  
premunire.

19 *Geo. 2, c. 12 (a), s. 12.*—That if any mayor, bailiff or bailiffs, or other chief officer or officers of any city, borough, or town corporate, shall voluntarily absent himself or themselves from, or knowingly and designedly prevent or hinder the election of any other mayor, bailiff or bailiffs, or other chief officer in the same city, borough, or town corporate, upon the day or within the time appointed by charter or ancient usage, or by the rules, orders, and directions of the lord lieutenant and council aforesaid for such election; the person or persons so offending, being thereof lawfully convicted, shall, for every such offence, suffer imprisonment for the space of six months without bail or mainprize, and shall be for ever disabled to take, hold, or exercise any office belonging to the same city, borough, or corporation.

Mayor &c.,  
absenting  
himself from,  
or hindering  
the election  
of any corpo-  
rate officer;  
imprison-  
ment, and  
incapacity.

5 & 6 *Edw. 6, c. 16 (a), s. 1, Eng.*—For the avoiding of corruption which may hereafter happen to be in the officers and ministers in those courts, places, or rooms wherein there is requisite to be had the true administration of justice, or services of trust; (2) and to the intent that persons worthy and meet to be advanced to the place where justice is to be ministered, or any service of trust executed, should hereafter be preferred to the same, and no other.

tion to a bishoprick); such persons shall forthwith proceed to investment and consecration, without suing "any bulls or other things by or from any foreign authoritie or power, for any such office or dignitie in any behalfe."—s. 3.


(a) *Ante*, pp. 99, 104.

(b) Entitled, "*An act for the better regulating of corporations.*"

(c) Entitled, "*An act against buying and selling of offices.*" See *post*, p. 329.



5 & 6 E. 6,  
c. 16.

  
Selling or taking money for any of the offices herein mentioned; forfeiture of all right to the office: and the person paying such money &c., disabled from holding it.

2. Be it therefore &c., that if any person or persons, at any time hereafter, bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, (2) or receive, have, or take any money, fee, reward, or any other profit, directly or indirectly, (3) or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward, or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them, (4) or to the intent that any person should have, exercise, or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them, (5) which office or offices, or any part or parcel of them, shall in anywise touch or concern the administration or execution of justice, (6) or the receipt, comptrolment, or payment of any of the king's highness treasure, money, rent, revenue, account, aulnage, auditorship, or surveying of any of the king's majestie's honors, castles, manors, lands, tenements, woods, or hereditaments, (7) or any of the king's majesty's customs, or any administration or necessary attendance to be had, done, or executed in any of the king's majestie's custom-house or houses, (8) or the keeping of any of the king's majestie's towns, castles, or fortresses, being used, occupied, or appointed for a place of strength and defence, (9) or which shall concern or touch any clerkship to be occupied in any manner of court of record, wherein justice is to be ministered; (10) that then all and every such person and persons that shall so bargain or sell any of the said office or offices, deputation or deputations, or that shall take any money, fee, reward, or profit for any of the said office or offices, deputation or deputations of any of the said offices, or any part of any of them, or that shall take any promise, covenant, bond, or assurance for any money, reward, or profit to be given for any of the said office or offices, deputation or deputations of any of the said office or offices, or any part of any of them, shall not onely lose and forfeit all his and their right, interest, and estate which such person or persons shall then have, of, in, or to any of the said office or offices, deputation or deputations, or any part of any of them, or of, in, or to the gift or nomination of any of the said office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such person or persons shall so make any bargain or sale, or take or receive any sum of money, fee, reward, or profit, or any promise, covenant, bond, or assurance to have or receive any fee, reward, money, or profit; (11) but also, that all and every such person or persons that shall give or pay any sum of money, reward, or fee, or shall make any promise, agreement, bond, or assurance for any of the said offices, or for the deputation or deputations of any of the said office or offices, or any part of any of them, shall immediately by and upon the same fee, money, or reward

given or paid, or upon any such promise, covenant, bond, or agreement had or made for any fee, sum of money, or reward to be paid as is aforesaid, be adjudged a disabled person in the law, to all intents and purposes, to have, occupy, or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee, or reward, or make any promise, covenant, bond, or other assurance, to give or pay any sum of money, fee, or reward.

5 & 6 Ed. 6,  
c. 16.

3. That all and every such bargains, sales, promises, bonds, agreements, covenants, and assurances as be before specified, shall be void to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance shall be had or made.

All such  
bargains and  
assurances  
shall be void.

4. Provided alway, that this act or any thing therein contained, shall not in anywise extend to any office or offices, whereof any person or persons is or shall be seized of any estate of inheritance, (2) nor to any office of parkership, or of the keeping of any park, house, manor, garden, chase, or forest, or to any of them; any thing in this act heretofore mentioned, to the contrary thereof in anywise notwithstanding.

To what offi-  
ces the act  
shall not  
extend.

5. Provided also, that if any person or persons do hereafter offend in any thing contrary to the tenor and effect of this act, yet that notwithstanding all judgments given, and all other act and acts executed or done by any such person or persons so offending, by authority or colour of the office or deputation which ought to be forfeited, or not occupied, or not enjoyed by the person so offending, as is aforesaid, after the said offence so by such person committed or done, and before such person so offending, for the same offence be removed from the exercise, administration, and occupation of the said office or deputation, shall be and remain good and sufficient in law, to all intents, constructions, and purposes, in such like manner and form as the same should or ought to have remained and been, if this act had never been had or made.

Acts done by  
any officer  
offending  
against this  
act, shall be  
good.

7. Provided always, and be it &c., that this act, or any thing therein contained, shall not in anywise extend, or be prejudicial or hurtful to any of the chief justices of the king's courts, commonly called the king's bench or common place, or to any of the justices of assise, that now be, or hereafter shall be; but that they and every of them may do in every behalf, touching or concerning any office or offices to be given or granted by them or any of them, as they or any of them might have done before the making of this act: any thing above mentioned to the contrary in anywise notwithstanding.

The act not  
to extend  
to offices  
given by the  
chief justices  
and judges of  
assise.

49 Geo. 3, c. 126 (a), s. 1. [Recites 5 & 6 Edw. 6, c. 16, ss. 1, 2, 3, 4, 5, & 7, Eng.] Be it therefore declared and

(a) Entitled, "An act for the further prevention of the sale and brokerage of offices."

49 G. 3, c. 126.

The act 5 & 6  
Edw. 6, Eng.  
extended to  
Ireland, and  
to all offices  
as herein.

enacted by &c., that from and after the passing of this act, the said act and all the provisions therein contained shall extend and be construed to extend to Scotland and Ireland, and to all offices in the gift of the crown, or of any office appointed by the crown, and all commissions civil, naval, or military, and to all places and employments, and to all deputations to any such offices, commissions, places, or employments in the respective departments or offices, or under the appointment or superintendence and controul of the lord high treasurer or commissioners of the treasury, the secretary of state, the lords commissioners for executing the office of lord high admiral, the master general and principal officers of his majesty's ordnance, the commander in chief, the secretary at war, the paymaster general of his majesty's forces, the commissioners for the affairs of India, the commissioners of the excise, the treasurer of the navy, the commissioners of the navy, the commissioners for victualling, the commissioners of transports, the commissary general, the storekeeper general, and also the principal officers of any other publick department or office of his majesty's government in any part of the united kingdom, or in any of his majesty's dominions, colonies, or plantations which now belong or may hereafter belong to his majesty, and also to all offices, commissions, places, and employments belonging to, or under the appointment or controul of the united company of merchants of England trading to the East Indies, in as full and ample a manner as if the provisions of the said act were repeated as to all such offices, commissions, places, and employments, and made part of this act; and the said act and this act, and all the clauses and provisions therein respectively contained, shall be construed as one act, as if the same had been herein repeated and re-enacted.

Buying or  
selling  
offices; mis-  
demeanor.

3. That from and after the passing of this act, if any person or persons shall sell, or bargain for the sale of, or receive, have, or take any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, or any promise, agreement, covenant, contract, bond, or assurance, or shall, by any way, device, or means, contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly; and also if any person or persons shall purchase, or bargain for the purchase of, or give or pay any money, fee, gratuity, loan of money, reward, or profit, or make or enter into any promise, agreement, covenant, contract, bond, or assurance to give or pay any money, fee, gratuity, loan of money, reward, or profit, or shall by any way, means, or device, contract or agree to give or pay any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any office, commission, place, or employment specified or described in the said recited act or this act, or within the true intent or meaning of the said act or this act, or for any deputation thereto, or for any part, parcel, or participation of the profits thereof, or for any appointment or nomination thereto or resignation thereof, or for the consent or

consents, or voice or voices of any person or persons to any such appointment, nomination, or resignation; then and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet, or assist such person therein, shall be deemed and adjudged guilty of a misdemeanor. 49 G. 3, c. 126.

4. That from and after the passing of this act, if any person or persons shall receive, have, or take any money, fee, reward, or profit, directly or indirectly, or take any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device, contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, for any interest, solicitation, petition, request, recommendation, or negotiation whatever, made or to be made, or pretended to be made, or under any pretence of making, or causing or procuring to be made any interest, solicitation, petition, request, recommendation, or negotiation, in or about, or in anywise touching, concerning, or relating to any nomination, appointment, or deputation to, or resignation of any such office, commission, place, or employment as aforesaid, or under any pretence for using or having used any interest, solicitation, petition, request, recommendation, or negotiation, in or about any such nomination, appointment, deputation, or resignation, or for the obtaining, or having obtained the consent or consents, or voice or voices of any person or persons as aforesaid, to such nomination, appointment, deputation, or resignation; and also if any person or persons shall give or pay, or cause or procure to be given or paid, any money, fee, gratuity, loan of money, reward, or profit, or make, or cause or procure to be made, any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device, contract or agree, or give or pay, or cause or procure to be given or paid, any money, fee, gratuity, loan of money, reward, or profit for any solicitation, petition, request, recommendation, or negotiation whatever, made or to be made, that shall in anywise touch, concern, or relate to any nomination, appointment, or deputation to, or resignation of any such office, commission, place, or employment as aforesaid, or for the obtaining or having obtained, directly or indirectly, the consent or consents, or voice or voices of any person or persons as aforesaid, to any such nomination, appointment, deputation, or resignation; and also if any person or persons shall, for or in expectation of gain, fee, gratuity, loan of money, reward, or profit, solicit, recommend, or negotiate in any manner, for any person or persons, in any matter that shall in anywise touch, concern, or relate to any such nomination, appointment, deputation, or resignation aforesaid, or for the obtaining, directly or indirectly, the consent or consents, or voice or voices of any person or persons, to any such nomination, appointment, or deputation, or resignation aforesaid; then and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet, or assist such

Receiving  
or paying  
money for  
soliciting  
offices; mis-  
demeanor.

49 G. 3, c. 126.

person therein, shall be deemed and adjudged guilty of a misdemeanor.

Keeping  
houses &c.  
for the bro-  
kerage of  
offices; mis-  
demeanor.

5. And whereas,—on the pretence of negotiating or soliciting the sale, transfer, or appointment of any office or offices which, under the exception of this act or otherwise, it may be lawful to sell,—offices for negotiating the same, and advertisements may be published, by means and under the colour of which, illegal transactions, intended to be prohibited by this act, may be carried on; be it therefore further enacted, that from and after the passing of this act, if any person or persons shall open or keep any house, room, office, or place for the soliciting, transacting, or negotiating in any manner whatever any business relating to vacancies in, or the sale or purchase of, or appointment, nomination, or deputation to, or resignation, transfer, or exchange of any offices, commissions, places, or employments whatever, in or under any publick department; then and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet, or assist therein, shall be deemed and adjudged guilty of a misdemeanor.

What offices  
may be sold  
notwith-  
standing this  
act.

7. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to any purchases, sales, or exchanges of any commissions or appointments in the honourable band of gentlemen pensioners, or in his majesty's yeoman guard, or in the marshalsea, and the court of the king of the palace of the king at Westminster, or to extend to any purchases, sales, or exchanges of any commissions in his majesty's forces for such prices as shall be regulated and fixed by any regulation made or to be made by his majesty in that behalf, or to any act or thing done in relation thereto, by any agents; provided that such agents shall be agents of regiments authorized by the commander in chief of his majesty's forces, or by the colonels or commandants of regiments or corps, and shall act therein under such regulations only as are or shall from time to time be established by his majesty, and shall not cause or procure, or knowingly permit or suffer to be printed or advertised, any advertisement or advertisements, proposal or proposals for any purchase, or sale, or exchange of any commission, or any negotiation relating thereto, and shall not receive or take any money, fee, gratuity, or reward, or any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device, contract or agree to receive or have any money, fee, gratuity, or reward, for acting in such behalf.

Officers sel-  
ling their  
commissions  
for more  
than the re-  
gulated pri-  
ces, shall be  
cashiered  
&c., and the  
commission  
forfeited.

8. Provided also, and be it further enacted, that every officer in his majesty's forces, who shall take, accept, or receive, or pay, or agree to pay any larger sum of money, directly or indirectly, than what is allowed by any regulations made by his majesty in relation to the purchase, sale, or exchange of commissions in his majesty's forces, or who shall pay, or cause to be paid, any sum of money, to any agent, or broker, or other

person, for negotiating the purchase or sale or exchange of any such commission, shall, on being convicted thereof by a general court-martial, forfeit his commission, and be cashiered; and as an encouragement for the detection of such practices, such commission so forfeited shall be sold, and half the regulated value (not exceeding five hundred pounds) shall be paid to the informer, and the other half, or the remainder, if more than five hundred pounds, shall go and be applied as his majesty shall order and direct, by any regulations from time to time made in that behalf. Provided also, that every person who shall sell his commission in his majesty's forces, and not continue to hold any commission in his majesty's forces, and shall, upon or in relation to such sale, take, accept, or receive, directly or indirectly, any money, fee, gratuity, loan of money, reward, or profit, or any promise, agreement, covenant, contract, bond, or assurance, or shall by any device or means contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, beyond the regulated price or value of the commission sold, and also every person who shall wilfully or knowingly aid, abet, or assist such person therein, shall be deemed and adjudged guilty of a misdemeanor within the provisions of this act.

**Officers selling their commissions for more than the regular price; misdemeanor.**

9. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to any office excepted from the provisions of the said act passed in the sixth year of the reign of king Edward the Sixth against buying and selling of offices; or to any office which was legally saleable before the passing of this act, and in the gift of any person by virtue of any office of which such person is or shall be possessed under any patent or appointment for his life; or to render invalid, or in any manner to affect any promise, agreement, covenant, contract, bond, assurance, or trust, entered into or declared before the passing of this act, and which, before the passing thereof, was a valid promise, agreement, covenant, contract, bond, assurance, or trust, in law or equity; or to any money paid, or to any act, matter, or thing done in pursuance of any such promise, agreement, covenant, contract, bond, or assurance.


**Saving of offices excepted out of 5 & 6 Edw. 6, c. 16, legally saleable before this act.**

10. Provided also, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to prevent or make void any deputation to any office, in any case in which it is lawful to appoint a deputy, or any agreement, contract, bond, or assurance lawfully made in respect of any allowance, salary, or payment made or agreed to be made by or to such principal or deputy respectively, out of the fees or profits of such office.

**Saving of lawful deputations, and payment out of fees.**

11. Provided also, and be it further enacted, that nothing in the said act or in this act contained shall extend to any annual reservation, charge, or payment made or required to be made out of the fees, perquisites, or profits of any office to any person who shall have held such office, in any commission or appoint-

**Saving of annual payments out of fees, to retired officers.**

**49 G. 3, c. 126.**  ment of any person succeeding to such office, or to any agreement, contract, bond, or other assurance made for securing such reservation, charge, or payment. Provided always, that the amount of such reservation, charge, or payment, and the circumstances and reasons under which the same shall have been permitted, shall be stated in the commission, patent, warrant, or instrument of appointment of the person so succeeding to and holding such office, and paying or securing such money as aforesaid.

**53 Geo. 3, c. 54.** [*Recites the act 49 Geo. 3, c. 126.*]

The 49 G. 3, shall not extend to the battle-axe guards in Ireland.

And whereas it was by the said act amongst other things provided, that nothing therein contained should extend or be construed to extend to any purchases, sales, or exchanges of any commissions or appointments in his majesty's yeoman guard: and whereas no mention is made in said act of his majesty's battle-axe guards in Ireland, and it is reasonable that the said battle-axe guards should be also excepted from the operation of the said act; be it &c., that nothing in the said act contained, for preventing the purchase, sale, exchange, or brokerage of offices, shall extend or be construed to extend to any purchases, sales, or exchanges of any commissions or appointments in his majesty's battle-axe guards in Ireland; any thing in the said act contained to the contrary in anywise notwithstanding.

The 49 G. 3, shall not extend to the office of six clerk in Ireland.

**53 Geo. 3, c. 129.** [*Recites the act 49 Geo. 3, c. 126.*]

And it is reasonable that the offices of the six clerks in the court of Chancery in Ireland should be excepted from the operation of the said act; be it &c., that nothing in the said act contained for preventing the purchase, sale, exchange, or brokerage of offices, shall extend or be construed to extend to any purchases, sales, or exchanges of any office or offices of a six clerk or six clerks of the court of chancery in Ireland; any thing in the said recited act contained to the contrary in anywise notwithstanding.

The 49 G. 3, extended to the sale of office of clerk of assize or judge's registrar in Ireland.

**1 & 2 Geo. 4, c. 54 (a), s. 7.**—That an act made in &c., [49 Geo. 3, c. 126,] shall extend and shall be deemed and construed to extend to prevent the sale or brokerage of the office of clerk of assize or nisi prius, or judge's registrar, in Ireland, in as full and ample a manner as if such office had been mentioned in the said recited act, to all intents and purposes whatsoever.

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(a) Entitled, "*An act to regulate the office of clerk of assize or nisi prius, or judge's registrar, in Ireland.*"

## CHAPTER V.

### OFFENCES AGAINST PUBLIC JUSTICE.

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#### SECTION I.

#### *Escape, Breach of Prison, and Rescue.*

**32 Geo. 3, c. 27, s. 3.**—That if any person confined in any such penitentiary house (*a*), shall escape or depart from such penitentiary house, without the order of the lord lieutenant or other chief governor of Ireland, before the time, for which he or she was under sentence or rule of transportation, be expired, and be found at large in this kingdom; such person being duly convicted thereof, shall suffer such punishment as a person duly transported and returning to this kingdom, is now by law liable to suffer. Escaping from penitentiary.

**4.** That if any person shall receive any person duly confined in such penitentiary house, or assist in breaking open the same, in order to free any person therein duly confined, or shall assist any person so duly confined in making his escape therefrom; the person so offending, being duly convicted, shall be considered guilty of felony, and suffer death as a felon, without benefit of clergy. Receiving or assisting persons so escaping; felony, death.

**51 Geo. 3, c. 63, s. 5.**—That if any person shall rescue any offender who by force of this act shall be ordered to hard labour in any house of correction or penitentiary as aforesaid, either in his conveyance to the place so appointed for such hard labour, or whilst such offender under this act shall be in the custody of the person or persons appointed for that purpose; or if any person shall be aiding or assisting in such rescue; or if any person, not having the actual custody of any such offender, shall be aiding and assisting in any escape, or shall, by supplying arms or instruments of disguise or escape, or otherwise, in any manner be aiding and assisting in the attempt to make any such escape, though no such escape shall be made; every such person, on being convicted of such offence by indictment before any court of oyer and terminer and general gaol delivery held in and for the place where such offence shall be committed, shall be by such court adjudged and ordered to the same Aiding rescue of offenders condemned to hard labor in penitentiary.

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(*a*) The lord lieutenant is (*s. l.*) authorised to appoint one or more penitentiary houses for the confinement, at hard labour, of persons under rule of transportation.



51 G. 3, c. 63.

portion of hard labour in some house of correction, as the person rescued or escaped, or attempted to be aided in any escape, had to serve or suffer at the time of such rescue, escape, or attempt of an escape.

Escape of offenders.

6. That if any person who shall be so ordered to hard labour as aforesaid, shall, at any time during the term for which he or she shall be so ordered to hard labour, break prison, or escape from the place of his or her confinement, or from the person or persons having the lawful custody of such offender; he or she so breaking prison or escaping, shall, on conviction for the first escape, be punished by doubling the term of the service and hard labour to which he or she was liable at the time of such escape; and on conviction for a second escape, be adjudged guilty of felony without benefit of clergy, and suffer death accordingly.

Made of proceeding to conviction in such case.

7. And to the intent that such conviction or convictions may be had with as little trouble and expence as possible, be it further enacted, that every offender or offenders escaping in manner aforesaid may and shall be tried before the justices of assize, oyer and terminer, or gaol delivery for the county, city, or place, where he, she, or they shall be apprehended and taken; and that the clerk of the peace where such order of confinement and hard labour shall be made, and his successor for the time being, shall, at the request of the prosecutor or any other in his majesty's behalf, certify a transcript briefly and in few words, containing the effect of every indictment and conviction of such person, and of the order made for his or her confinement and hard labour, to the justices of assize, oyer and terminer, and gaol delivery, where such person shall be indicted for any such escape, not taking for the same above the sum of two shillings and six pence; which certificate, being produced in court, shall be a sufficient proof that such person or persons have before been convicted and ordered to such place of confinement and hard labour.

Aiding prisoners of war to escape; felony.

52 Geo. 3, c. 156, s. 1.—Whereas many prisoners of war confined and on parole in different parts of his majesty's dominions, have of late escaped by the aid and assistance of many of his majesty's subjects and others; and it is necessary to repress such practices and violations of the allegiance due to his majesty, and of the law, by more effectual punishment; be it therefore &c., that every person who shall, from and after the passing of this act, knowingly and wilfully aid or assist any alien enemy of his majesty, being a prisoner of war in his majesty's dominions, whether such prisoner shall be confined as a prisoner of war in any prison or other place of confinement, or shall be suffered to be at large in his majesty's dominions or any part thereof on his parole, to escape from such prison or other place of confinement, or from his majesty's dominions, if at large upon parole, shall, upon being convicted thereof, be adjudged guilty of felony, and be liable to be transported as a felon, for life or for such term of fourteen or seven

years, as the court before whom such person shall be convicted shall adjudge. 52 G. 3, c. 155

2. Provided always, and be it further enacted, that every person who shall knowingly and wilfully aid or assist any such prisoner at large on parole in quitting any part of his majesty's dominions where he may be on his parole, although he shall not aid or assist such person in quitting the coast of any part of his majesty's dominions, shall be deemed guilty of aiding the escape of such person under the provisions of this act.

Offence complete, though no aid be given to quit the coast.

3. That if any person or persons owing allegiance to his majesty, after any such prisoner as aforesaid hath quitted the coast of any part of his majesty's dominions in such his escape as aforesaid, shall knowingly and wilfully, upon the high seas, aid or assist such prisoner in his escape to or towards any other dominions or place; such person shall also be adjudged guilty of felony, and be liable to be transported as aforesaid: and such offences committed upon the high seas and not within the body of any county, shall and may be inquired of, tried, heard, determined, and adjudged in any county within the realm, in like manner as if such offences had been committed within such county.

Assisting on high seas, prisoner to escape.

4. That this act shall not be deemed or taken to prevent any person committing any offence mentioned in this act, from being prosecuted in such manner as he might by law have been prosecuted if this act had not passed; but nevertheless, no person prosecuted otherwise than under the provisions of this act shall be liable to be prosecuted for the same offence under the provisions hereof; and no person prosecuted under the provisions of this act shall, for the same offence, be liable to be otherwise prosecuted.

This act shall not bar prosecution under any other law; but the party not to be twice prosecuted.

1 & 2 Will. 4, c. 44, s. 4.—That from and after the passing of this act, every person or persons who shall by force or violence break open any gaol, prison, or bridewell, with an intention to rescue and enlarge him, her, or themselves, or any other prisoner or prisoners therein confined on account of any offence, though the same be not capital; all and every person or persons who shall commit such offence, and shall be found guilty thereof, shall be transported beyond the seas for the term of his natural life, or for the term of seven or fourteen years, or be imprisoned, with or without hard labour, for any term not exceeding three years, and if a male, be once, twice, or thrice publicly or privately whipped, if the court shall think fit, in addition to such imprisonment, and shall and may be tried before the trial of the person or persons so enlarged, any law or statute to the contrary in anywise notwithstanding.

Breaking gaol; transportation or imprisonment.

5. That every person who shall rescue any person committed by a justice of the peace on a mittimus, for treason, felony, or any of the offences herein before mentioned (a), punishable with

Rescuing prisoners; transportation or imprisonment.

(a) See pp. 165, 166, and 167.

**1 & 2 W. 4, c. 44.** transportation, from a constable or any person legally authorized for that purpose, before the person or persons so committed shall be lodged in gaol, shall, on being found guilty thereof, be transported beyond the seas for the term of his natural life, or for the term of seven or fourteen years, or be imprisoned, with or without hard labour, for any term not exceeding three years, and if a male, be once, twice, or thrice publicly or privately whipped, if the court shall think fit, in addition to such imprisonment.

Rescuing  
convicts  
of murder;  
felony,  
death.

**31 Geo. 3, c. 17, s. 10.**—That if any person or persons shall by force set at liberty or rescue, or attempt to rescue or set at liberty, any person out of prison, who shall be committed for, or found guilty of murder; or rescue or attempt to rescue any person convicted of murder going to execution, or during execution; every person so offending shall be deemed, taken, and adjudged to be guilty of felony, and shall suffer death without benefit of clergy.

Rescuing  
the body of  
a convict of  
murder;  
felony.

**11.** That if any person or persons shall, after such execution had, by force rescue, or attempt to rescue the body of such offender out of the custody of the sheriff or his officers, during the conveyance of such body to any of the places hereby directed, or shall by force rescue, or attempt to rescue such body from the company of surgeons, or their officers or servants, or from any county infirmary, or the house of any surgeon, or other place where the same shall have been deposited, in pursuance of this act (*a*); every person so offending shall be deemed and adjudged to be guilty of felony, and shall be liable to be transported for the term of seven years, in like manner as is directed by the laws now in force relating to the transportation of felons, and shall be subject to the like punishment and methods of conviction, in case of returning into, or being found at large within the kingdom of Ireland, within the said term of seven years, in all respects as by law other felons are subject to, in case of unlawfully returning from transportation.

Rescuing  
cattle, or in-  
juring  
pound; mis-  
demeanor.

**6 Geo. 4, c. 43, s. 2**—That if any person, at any time after the passing of this act, shall rescue any cattle which shall have been lawfully seized for the purpose of being impounded, or shall break down, injure, or destroy any pound legally constituted, whether any cattle shall be impounded therein or not, or shall commit any pound breach or rescue, whereby any cattle of any description shall escape or be enlarged from any such pound; every such person shall be deemed guilty of a misdemeanor; and upon conviction of such offence, either at the assizes or quarter sessions of the county or place where such pound shall be situated, shall be liable to suffer fine and impri-

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(*a*) Viz.—In the hall of the surgeons' company, or such other place as the company shall appoint, in case of prisoners executed in *Dublin*; and in the county infirmary, in all other cases.

sonment, at the discretion of such court before whom such **6 G. 4, c. 42.** offender shall be tried and convicted.

1 & 2 Geo. 4, c. 88 (a), s. 1.—Whereas divers daring attempts have of late been made to effect the rescue or prevent the detention of persons charged with, or committed for, or on suspicion of felony: and whereas it might tend more effectually to prevent the commission of such offences, if further provisions were made for the punishment of persons who may hereafter be convicted thereof, as are hereinafter enacted; be it therefore &c., **Rescuing persons charged with felony.** that from and after the passing of this act, if any person shall rescue, or aid and assist in rescuing, from the lawful custody of any constable, officer, headborough, or other person whomsoever, any person charged with, or suspected of, or committed for any felony, or on suspicion thereof; then, if the person or persons so offending shall be convicted of felony, and be entitled to the benefit of clergy, and be liable to be imprisoned for any term not exceeding one year, it shall be lawful for the court by or before whom any such person or persons shall be convicted, to order and direct, in case it shall think fit, that such person or persons, instead of being so fined and imprisoned as aforesaid, shall be transported beyond the seas for seven years, or be imprisoned only, or be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not less than one and not exceeding three years.

## SECTION 2.

### *Returning from Transportation.*

8 Geo. 1, c. 9 (b), s. 1.—Whereas the laws in being have not proved effectual for the suppressing of robberies, burglaries, and other felonies, and for the transporting of felons and vagabonds; and some of the said laws want to be amended: and whereas some felons and vagabonds, who have been ordered to be transported, have already, and others may hereafter come on shoar and return to this kingdom of Ireland before or after they have been actually transported to America, or may break gaol, or escape before such transportation: be it &c., that if any felon or felons, vagabond or vagabonds, who have been or shall be ordered to be transported pursuant to any of the statutes now in force in this kingdom, shall afterwards break gaol, or escape, or be at large within any part of this kingdom of Ireland, without some lawful cause, before the expiration of the term **Offenders sentenced to transportation, and breaking gaol; felony.**

(a) Entitled "*An act for the amendment of the law of rescue.*"

(b) This act, which had expired, has been revived and perpetuated by the act 31 Geo. 3, c. 44.

8 G. 1, c. 2

for which such felon or felons, vagabond or vagabonds, was, were, or shall be ordered to be transported; all and every such person and persons, being thereof lawfully convicted, shall suffer death as in cases of felony, *without benefit of clergy or of the statute made in the ninth year of the reign of her late majesty queen Anne, intituled, 'An act for taking away the benefit of clergy in certain cases, and for taking away the book in all cases, and for repealing part of the statute for transporting felons.'*

Such offender may be tried in any county; and the clerk of the crown shall certify the conviction and order for transportation.

2. And that such conviction may be with as little trouble and expence as possible, be it &c., that such offender or offenders shall and may be tryed for the said offence in any county of this kingdom; and that the clerk of the crown and clerk of the peace, where such orders of transportation shall be made, and their successors for the time being, shall, at the request of the prosecutor or any other in his majesty's behalf, certify a brief abstract containing the effect and tenor of every indictment and conviction of such man or woman, and of the order for his or her transportation, to his majesty's justices of the King's Bench, or the justices of assize, oyer and terminer, or gaol delivery, or the justices of the peace at their quarter sessions to be held for the county of Dublin, and county of the city of Dublin, where such man or woman shall be indicted or presented, not taking for the same above the sum of two shillings and six pence; which certificate, being produced in court, shall be a sufficient proof that such person or persons have been before convicted as a felon, or presented as a vagabond respectively, and ordered to be transported.

Harbouring such convicts who may have escaped; felony.

6. And that none of the offenders aforesaid may be concealed or harboured by any person whatsoever; be it &c., that whosoever shall, after the first day of February, (1721,) receive, harbour, or conceal any robbers or felons ordered or to be ordered to be transported, and who, after such order for transportation, shall have broke gaol or escaped, or been at large in this kingdom, or shall break gaol, escape, or be at large in this kingdom, without some lawful cause, before the expiration of the term for which such robbers or felons have been or shall be ordered to be transported, knowing them to be such, and shall be thereof legally convicted; such offender shall suffer and incur the pain of death, as a felon convicted, *without benefit of clergy, or of the said statute of the ninth year of the reign of the late queen Anne.*

Offender sentenced to transportation, and

5 Geo. 4, c. 84 (a), s. 22 (pars.)—That if any offender who shall have been or shall be so sentenced or ordered to be transported or banished, or who shall have agreed or shall

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(a) Entitled, "*An act for the transportation of offenders from Great Britain.*"

agree to transport or banish himself or herself on certain conditions, either for life or any number of years, under the provisions of this or any former act, shall be afterwards at large within any part of his majesty's dominions, without some lawful cause, before the expiration of the term for which such offender shall have been sentenced or ordered to be transported or banished, or shall have so agreed to transport or banish himself or herself; every such offender so being at large, being thereof lawfully convicted, shall suffer death as in cases of felony *without the benefit of clergy*; and such offender may be tried either in the county or place where he or she shall be apprehended, or in that from whence he or she was ordered to be transported or banished.

5 G. 4, c. 84.

found at large, before expiration of sentence; felony.

23. That in any indictment against any offender for being found at large contrary to the provisions of this or of any other act now made or hereafter to be made, and also in any indictment against any person who shall rescue or attempt to rescue, or assist in rescuing any such offender from such custody, or who shall convey or cause to be conveyed any disguise, instrument for effecting escape, or arms, to any such offender, contrary to the provisions of this or of any other act now made or hereafter to be made, whether such offender shall have been tried before any court or judge within or without the united kingdom, or before any naval or military court martial, it shall be sufficient to charge and ~~allege~~ the order made for the transportation or banishment of such offender, without charging or alleging any indictment, trial, conviction, judgment, or sentence, or any pardon or intention of mercy or signification thereof, of or against or in any manner relating to such offender.

Form of indictment against offenders found at large.

24. That the clerk of the court or other officer having the custody of the records of the court where such sentence or order of transportation or banishment shall have been passed or made, shall, at the request of any person on his majesty's behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, and of the sentence or order for his or her transportation or banishment (not taking for the same more than six shillings and eight-pence); which certificate shall be sufficient evidence of the conviction and sentence or order for the transportation or banishment of such offender; and every such certificate, if made by the clerk or officer of any court in Great Britain, shall be received in evidence, upon proof of the signature and official character of the person signing the same; and every such certificate, if made by the clerk or officer of any court out of Great Britain, shall be received in evidence, if verified by the seal of the court, or by the signature of the judge or one of the judges of the court, without further proof.

Certificate of the clerk of the court, of the conviction and sentence, sufficient evidence.

9 Geo. 4, c. 54, s. 16.—That if any person heretofore sen- Returning

9G. 4, c. 54.

from transportation;  
felony.

Allegation  
of sentence  
&c. of transportation,  
sufficient,  
without  
reference to  
indictment.

Certificate  
of sentence  
of transportation,  
sufficient  
evidence.

tenced or ordered, or hereafter to be sentenced or ordered to be transported, or who shall have agreed or shall agree to transport or banish himself or herself on certain conditions, either for life or for any number of years, shall be afterwards at large within any part of the united kingdom, without some lawful cause, before the expiration of his or her term of transportation or banishment; every such offender shall be guilty of felony, and *shall suffer death as a felon*: and every such offender may be tried, either in the county or place where such offender shall be found at large, or in the county or place at which such sentence or order of transportation or banishment was passed or made.

17. That in any indictment or information against any offender, for being found at large contrary to the provisions of this act, or of any other act now in force or hereafter to be in force, whether such offender shall have been tried before any court or judge within or without the united kingdom, or before any naval or military court martial, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment, or other proceeding, or any pardon or intension of mercy, or signification thereof, of or against or in any manner relating to such offender.

18. That the clerk of the court, or other officer having the custody of the records of the court where any such sentence, or order of transportation or banishment shall have been passed or made, or his deputy, shall, at the request of any person on behalf of his majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information, and conviction of such offender, and of the sentence or order for his or her transportation or banishment, (not taking for the same more than the sum of six shillings and eight-pence,) which certificate shall be sufficient evidence of the conviction, and sentence or order for the transportation or banishment of such offender; and every such certificate, if made by the clerk or officer of any court in Ireland, or by his deputy, shall be received in evidence, upon proof of the signature of the person signing the same; and every such certificate, if made by the clerk or officer of any court out of Ireland, shall be received in evidence, if verified by the seal of the court, or by the signature of the judge, or of one of the judges of such court, without further proof.

4 & 5 Will. 4, c. 67 (a). [*Recites 5 Geo. 4, c. 84, s. 22, ut supra, p. 340.*]—And whereas it is expedient that a lesser punishment than that of death should be provided for the punishment of the offenders convicted of any such offences so specified in the said act of the fifth year of the reign of king

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(a) Entitled, "An act for abolishing capital punishment in case of returning from transportation."

George the Fourth; be it therefore &c., that so much of the recited act as inflicts the punishment of death upon persons convicted of any offence therein and hereinbefore specified, shall be, and the same is hereby repealed; and that from and after the passing of this act, every person convicted of any offence above specified in the said act of the fifth year of the reign of his late majesty king George the Fourth, or of aiding or abetting, counselling or procuring the commission thereof, shall be liable to be transported beyond the seas for his or her natural life; and previously to transportation, shall be imprisoned, with or without hard labour, in any common gaol, house of correction, prison, or penitentiary, for any term not exceeding four years.

4 & 5 W. 4,  
c. 67.

Offences in  
recited act  
punishable  
with trans-  
portation.

### SECTION 3.

#### *Perjury.*

28 Eliz. c. 1 (a), s. 1.—For as much as this realm of Ireland is greatly troubled and hindered by reason of wilfull perjurie daily committed, notwithstanding that many good lawes have been made and ordeyned for redress thereof, and for that great dangers and perilles are daily like to fall, if some further remedies shall not be speedily provided for prevention thereof; be it therefore &c., that all and every person and persons which, at any time after the end of this present parliament, shall unlawfully or corruptly procure any witness or witnesses, by letters, rewardes, promisses, or by any other sinister or unlawful labour or meanes whatsoever, to commit any wilful or corrupt perjurie, in any matter or cause whatsoever now depending, or that hereafter shall depend in suit and variaunce, by any writ, action, bill, complaint, or information, in any wise concerning any lands, tenements, or hereditaments, or any goods, chattles, debts, damages, or any other cause of action whatsoever, in any of her majesty's courtes of castle chamber, chauncerie, chief place, courte of common plees, exchequer, or any other court or courts, before any judge, justicer, president, governour, commissioners, mayor, sheriffes, senescalles, or any other officers whatsoever, as well within liberties as without, in this realm of Ireland; or shall likewise, unlawfully or corruptly procure or suborne

Procuring a  
witness to  
commit per-  
jury in any  
court.

(a) Entitled, "An act concerning wilfull perjurie."



**28 Eliz. c. 1.** any witness or witnesses, which shall, from and after the end of this present parliament, be sworn to testifie in perpetuam rei **Punishment.** memoriam; that then everie such offendor and offendours shall, for his or their said offence, being thereof lawfully convicted or attainted, lose and forfeite the summe of fortie poundes: and if it fortune any such offendour or offendours, so being convicted or attainted as aforesaid, not to have any goods or chattels, lands or tenements, to the value of fortie poundes; that then everie such person, so being convicted or attainted of any offences aforesaid, shall, for his or their said offence, suffer imprisonment by the space of one half year without bayle or mayneprise, and to stand upon the pillory by the space of one whole hour, in some market towne next adjoyning to the place where the offence was committed, in open market there, or in the market towne itselfe where the offence was committed: and that no person or persons being so convicted or attainted, to be from thence forth received as a witnesse, to be deposed or sworn in any court of record, or within any other court or courts within this realm of Ireland, untill such time as the judgment given against such person or persons shall be reversed by attaint or otherwise. And that, upon every such reversall, the parties grieved to recover his or their damages against all and every such person and persons as did procure the sayd judgment, so reversed, to be first given against them or any of them, by action or actions, to be sued upon his or their case or cases, according to the course of the common lawes of this realm.

2. That if any person or persons, after the end of this parliament, either by the subornation, unlawfull procurement, sinister perswasion or means of any others, or by their owne act, consent, or agreement, willfully or corruptly commit any manner of willful perjurie, by his or their deposition in any the courts before mentioned, or before any the judges, commissioners, or officers before mentioned, or being examined ad perpetuam rei memoriam; that then every person and persons so offending, and being thereof duely convicted or attainted by the laws of this realm, shall for his or their offence loose and forfeit twenty poundes, and to have imprisonment by the space of six months, without baile or mainprise; and the oath of such person or persons so offending, from thenceforth, not to be received in any court of record within this realm, untill such time as the judgment given against the said person or persons shall be reversed by attaint or otherwise: and that upon every such reversall, the parties grieved to recover his or their damages against all and every such person or persons, as did procure the said judgment, so reversed, to be given against them and every of them, by action or actions, to be sued upon his or their case or cases, according to the course of the common lawes of this realm: and if it happen the said offendor or offendours, so offending, not to have any goods or chattles to the value of xx. li., that then he or they to be set upon the pillorie in some

market place within the county, city, or borough, to be set upon the pillorie where the said offences shall be committed, by the sheriffe or his minister, if it shall fortune to be without any citie or towne corporate; and if it happen to be within any such citie or towne corporate, then by the said head officer or officers of such citie or towne corporate, or by his or their ministers, and there to have both his ears nailed, and from thenceforth to be discredited and dishabled for ever to be sworn in any of the courts of record aforesaid, until such time as the judgment shall be reversed, and thereupon to recover his damages in maner and forme aforesaid: the one moyetie of all which summes of money, goods, and chattels, to be forfeited in manner and forme before mentioned, to be to the queen our sovereign lady, her heires and successors, and the other moietie to such person or persons as shall be grieved, hindered, or molested, by reason of any the offence or offences before mentioned, that will sue for the same by action of debt, bill, plaint, information, or otherwise in any of her majestie's courts of record; in which no wager of law, essoine, protection, injunction, or any other commandment to be allowed.

28 Eliz. c. 1.

  
Punishment  
for perjury.

3. That as well the judge and judges of every such of the said courts where any such suite is or shall be, and whereupon any such perjury is or shall happen to be committed, as also the justices of assise and gaole deliverie, in their several circuites, and the justice of peace in every county within this realm, at their quarter sessions, both within liberties and without, shall have full power and authoritie, by vertue hereof, to enquire of all and every the defaults and offences perpetrated, committed, or done, contrarie to this act, by inquisition, presentment, bill, or information before them exhibited, or otherwise lawfully to heare and determine the same; and thereupon to give judgment, award processe and execution of the same, according to the course of the lawes of this realm.

Who shall  
take cogni-  
zance of  
such offen-  
ces.

3 Geo. 2, c. 4, s. 2.—And the more effectually to deter persons from committing wilful and corrupt perjury, or subornation of perjury, be it &c., that besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction within the same county for a time not exceeding seven years, there to be kept to hard labour during all the said time, or to be transported to some of his majesty's plantations beyond the seas for a term not exceeding seven years, as the court shall think most proper, and thereupon judgment shall be given, that the person convicted shall be committed or transported accordingly, over and besides such punishment as shall be adjudged to be inflicted on such person, agreeable to the laws now in being; and if transportation be directed, the same shall be executed in such manner, as is or shall be provided by law for the transportation of felons; and if

In addition  
to present  
punishment  
for perjury,  
court may  
order con-  
victs to be  
imprisoned  
or trans-  
ported for  
seven years.

3 G. 2, c. 4.

any person so committed or transported shall voluntarily escape, or break prison, or return from transportation before the expiration of the time for which he shall be ordered to be transported as aforesaid; such person, being thereof lawfully convicted, shall suffer death as a felon without benefit of clergy, or of the statute, and shall be tried for such felony in the county where he so escaped, or where he shall be apprehended.

Requisites  
of indict-  
ments for  
perjury and  
subornation  
of perjury.

31 Geo. 3, c. 18, s. 1.—Whereas, by reason of difficulties attending prosecutions for perjury and subornation of perjury, those heinous offences have frequently gone unpunished, to the manifest let and hindrance of justice; for remedy whereof, be it &c., that from and after the passing of this act, in every information or indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, and before whom the oath was taken (averring such court, or person or persons to have a competent authority to administer the same), together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; and that in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant; and that it shall not in either case be necessary to set forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or in equity, or the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed.

Court may  
order prose-  
cution to be  
carried on,  
without ex-  
pense to the  
prosecutor.

2. And the better to prevent great offenders from escaping punishment, by reason of the expense attending such prosecution, be it &c., that it shall and may be lawful to and for the court before which any person shall have been examined as a witness upon any trial in such court, and such court is hereby authorized, (sitting the court, or within twenty-four hours after,) to direct a bill of indictment to be preferred, and such person to be prosecuted for the said offence of perjury, in case there shall appear to the court a reasonable cause for such prosecution, and to assign the party injured, or other person undertaking such prosecution, counsel, who shall, and are hereby required to do their duty without fee or reward; and every such prosecution so directed, shall be carried on without payment of any tax or duty, and of any fee in court, or to any officer of the court; and the proper officer of the court, (who shall be attending when such prosecution is directed,) shall and is hereby required, without any fee or reward, to give the person undertaking such prosecution, a certificate of the same being directed, together with the name of the counsel assigned by the court; which certificate shall be deemed sufficient proof of such prosecution having been directed as aforesaid; provided, that no such direction or certificate

shall be given in evidence upon any trial to be had pursuant to such direction as aforesaid. 31 G. 3, c. 18.

3. And whereas doubts have been entertained whether justices of the peace have jurisdiction in cases of perjury at common law ; be it declared and enacted by the authority aforesaid, that it shall and may be lawful to and for the justices of the peace at their quarter sessions, to hear and determine in all cases of perjury committed within their jurisdiction.

Perjury  
cognizable  
at quarter  
sessions.

4 *W. & M. c. 4 (a), s. 3.*—Provided further, that all and every person or persons swearing falsely, or forswearing him, her, or themselves in such affidavit or affidavits, shall incur and be liable unto the same penalties, as if such affidavit or affidavits had been made or taken in open court.

False swear-  
ing before  
commission-  
ers for taking  
affidavits ;  
perjury.

4. And for the prevention and better discovery of all frauds and perjury ; be it enacted by the authority aforesaid, that no affidavit, taken by any commissioners authorised as aforesaid, shall be read or made use of in any of the courts aforesaid, unless the commissioner or person that take the same, mention in the caption thereof, as well the day when, as also the place and county where the same was sworn.

The day and  
place to be  
mentioned in  
the caption.

5. Provided also, that the said affidavits taken as aforesaid shall not be read or made use of in any of the said courts, before the same be filed in the respective courts.

Such affida-  
vits not to be  
read till filed.

36 *Geo. 3, c. 25 (b), s. 16.*—That the court held by the said assistant barristers, and every of them, for hearing and determining the said causes in a summary way, by English bill or paper petition as aforesaid, shall be a court of record ; and in case any person who shall be examined upon oath, or, if a Quaker, on affirmation, by any such assistant barrister, by virtue of this act, shall commit wilful perjury, or falsely affirm, and be thereof duly convicted according to law, or shall commit wilful and corrupt perjury, in falsely swearing or affirming in any affidavit or affirmation by this act required to be made before any assistant barrister, and be thereof duly convicted according to law ; such person shall be set in the pillory for one hour, and suffer such imprisonment, not exceeding twelve months, as the court before whom he shall be convicted shall direct.

Assistant-  
barristers'  
court shall  
be a court of  
record.

Perjury  
before assis-  
tant-bar-  
rister.

(a) Entitled, "*An act for taking affidavits in the country, to be made use of in the courts of King's Bench, Common Pleas, and Exchequer.*" By sec. 1, the power of taking such affidavits is given to all judges of assize, upon circuit, and to such commissioners as the said courts respectively shall appoint.

(b) Entitled, "*An act for the better and more convenient administration of justice, and for the recovery of small debts in a summary way, at the sessions of the peace of the several counties at large within this kingdom, except the county of Dublin ; and for continuing and amending an act, entitled, 'An act for the better execution of the law and preservation of the peace within counties at large.'*"

55 G. 3, c. 157.

False swear-  
ing before  
British com-  
missioners of  
Irish equity  
courts &c.;  
perjury.

55 Geo. 3, c. 157 (a), s. 8.—That every person who shall, in England or Scotland, be sworn or deponed, and examined as a witness, or sworn or deponed to the truth of any answer, or plea, or affidavits before any officer or officers who shall be appointed under the authority of this act for taking the same, and who shall, in his or her answer, plea, or affidavit, wilfully swear or depone falsely, shall be deemed guilty of perjury, and shall incur and be liable to the same pains and penalties as if such person had wilfully sworn or deponed falsely in the open court, wherein the suit, in which such oath was so taken then, depended.

Courts of  
K. B. and  
C. P. may  
appoint com-  
missioners in  
Great Britain  
for taking  
affidavits.

False swear-  
ing; perjury.

9. That the courts of King's Bench and Common Pleas in Ireland respectively, shall, from and after the passing of this act, have such and the same powers of granting commissions for taking affidavits in all parts of Great Britain, as the courts of King's Bench and Common Pleas in Ireland respectively now have in Ireland (b); and all and every person and persons wilfully swearing falsely in any affidavit to be made before any person who shall be empowered to take affidavits under the authority aforesaid, shall be deemed guilty of perjury, and shall incur and be liable to the same pains and penalties as if such person had wilfully sworn falsely in the open court wherein the suit, in which such affidavit was so taken, at such time depended.

Officers here-  
in named,  
authorised to  
take affida-  
vits in the  
several  
courts.

1 & 2 Geo. 4, c. 53, s. 53.—That it shall and may be lawful to and for the said officers hereinafter named, of and in the several courts aforesaid (c); and the said officers are hereby fully authorised, empowered, and directed, whenever they shall be thereunto required, (except on Sundays, Good Friday, and Christmas Day,) to take affidavits or affirmations in all matters relating to the business of the said courts respectively, and to administer the necessary oaths or affirmations for that purpose; that is to say, in the civil side of the court of King's Bench and in the court of Common Pleas, the prothonotary, the clerk of the rules, and the filacer; and in the pleas' side or common law side of the court of Exchequer, the clerk of the pleas, the clerk of the rules, and the filacer; and all such oaths, affidavits, and affirmations shall be of the same force, validity, and effect, and shall and may be filed and used and acted upon respectively, as fully and effectually, to all intents and purposes whatsoever, as if the same had been sworn or affirmed before the said courts, or all or any of the judges thereof respectively; and any person who shall wilfully or corruptly swear or affirm any thing false in any

False swear-  
ing; perjury.

(a) Entitled, "*An act for the better examination of witnesses in the courts of equity in Ireland; and for empowering the courts of law and equity in Ireland to grant commissions for taking affidavits in all parts of Great Britain.*"

(b) A similar power is given to the court of Exchequer, on the Pleas' side, by sec. 2 of this act.

(c) Viz., King's Bench, Common Pleas, and Exchequer.

such affidavits or affirmations, shall be subject to all pains, penalties, punishments, and disabilities for wilful and corrupt perjury, in like manner in all respects as if such affidavits had been made in any of the said several courts, or before all or any of the judges thereof respectively; and that from and after the commencement of this act, it shall not be considered a part of the duty of any of the judges of the said courts respectively, to take any affidavits or affirmations, except on their circuits, or in such cases where they shall think fit and proper so to do.

1 & 2 W. 4, c. 53.

6 Geo. 4, c. 30 (a), s. 19.—That from and after the commencement of this act, it shall and may be lawful for the several clerks and examiners of the masters in chancery in ordinary, and all other persons who may be hereafter appointed clerks and examiners to the present or any future master in chancery in ordinary, while they shall respectively continue such clerks and examiners, and the said clerks and examiners are hereby fully authorized, empowered, and directed to take affidavits or affirmations, answers, examinations, or other matters whatever, to be put in on oath in the said court of chancery, or in matters on petitions in cases of bankrupts, lunatics, or minors, and to administer the necessary oaths and affirmations for that purpose; and all such answers, oaths, affidavits, or affirmations shall be of the same force, validity, and effect, and shall and may be filed, used, and acted upon respectively, as fully and effectually to all intents and purposes whatsoever; and all persons swearing same shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or perjury contained therein, as if the same had been sworn or affirmed before the said court of chancery, or all or any of the masters in ordinary thereof (b).

Clerks and examiners of masters in chancery may take affidavits, answers, &c.

False swearing; perjury

(a) Entitled, "*An act to amend an act of the fourth year of his present majesty's reign, for the better administration of justice in his majesty's court of chancery in Ireland.*"

(b) In addition to the enactments above set out, or which will be found under other and appropriate heads, the offence of false swearing on certain subjects is, by several acts of parliament, made punishable as perjury. As a review of the special provisions of those acts must come immediately under consideration in any prosecution for perjury founded upon them, and as a repetition of those provisions would be manifestly beyond the scope and design of the present work, a bare enumeration of the statutes will suffice.

For false swearing in matters relating to the army and its pay, see the acts 48 Geo. 3, c. 120, s. 48; 51 Geo. 3, c. 78, s. 29; 2 & 3 Will. 4, c. 53, s. 45; and c. 106, s. 4.—Auditing public accounts, 52 Geo. 3, c. 51, s. 34; and c. 52, s. 44.—Bankrupts and insolvents, 6 & 7 Will. 4, c. 14, s. 117, and 1 & 2 Geo. 4, c. 59,

5 & 6 W. 4,  
c. 62.

5 & 6 Will. 4, c. 62 (a), s. 2. [*The lords of the treasury may substitute a declaration for any oath, affirmation, or affidavit, used in certain public offices.*]

3. [*The instrument substituting such declaration shall be published in the London Gazette; twenty-one days after which, this act shall apply.*]

4. [*After which time, oaths and affidavits shall be disused in such offices.*]

False declaration relating to certain revenues, a misdemeanor.

5. That if any person shall make and subscribe any such declaration as hereinbefore mentioned in lieu of any oath, solemn affirmation, or affidavit by any act or acts relating to the revenues of customs or excise, stamps and taxes, or post office, required to be made on the doing of any act, matter, or thing, or for verifying any book, account, entry, or return, or for any purpose whatsoever, and shall wilfully make therein any false statements as to any material particular; the person making the same shall be deemed guilty of a misdemeanor.

6. [*Oath of allegiance still to be taken.*]

s. 27.—Chancery offices, 4 & 5 Will. 4, c. 78, s. 29.—Constabulary, 6 & 7 Will. 4, c. 13, s. 24.—Ecclesiastical affairs, 4 Geo. 4, c. 99, s. 56; 2 & 3 Will. 4, c. 41, s. 18; 3 & 4 Will. 4, c. 37, s. 123; c. 78, s. 82; and c. 100, s. 39.—Education, 28 Geo. 3, c. 15, s. 13; and 53 Geo. 3, c. 107, s. 30.—Election of members of parliament, 4 Geo. 4, c. 55, s. 85; 2 & 3 Will. 4, c. 88, s. 42.—Fisheries, 59 Geo. 3, c. 109, s. 33.—Foreign enlistment, 59 Geo. 3, c. 69, s. 5.—Grand jury presentment, 33 Geo. 2, c. 7, s. 10; 13 & 14 Geo. 3, c. 18, s. 15; and c. 32, s. 37; 23 & 24 Geo. 3, c. 42, s. 21; 36 Geo. 3, c. 55, s. 91; 45 Geo. 3, c. 43, s. 33; 58 Geo. 3, c. 67, s. 29; 59 Geo. 3, c. 84, s. 29; and 6 & 7 Will. 4, c. 116, s. 172.—Linen Manufacture, 5 & 6 Will. 4, c. 27, s. 31.—Marine mutiny act, 6 & 7 Will. 4, c. 9, s. 56.—Mutiny act, 6 & 7 Will. 4, c. 8, s. 78.—Newspapers, 23 & 24 Geo. 3, c. 28, s. 6.—Public funds, 10 Geo. 4, c. 24, s. 44.—Public offices, 3 Geo. 4, c. 115, s. 5; and 5 & 6 Will. 4, c. 48, s. 32.—Public revenue, 55 Geo. 3, c. 19, s. 94; c. 80, s. 11; and c. 104, s. 13; 59 Geo. 3, c. 107, s. 46; 1 Geo. 4, c. 79, s. 6; and 10 Geo. 4, c. 50, s. 83.—Public works and institutions, 11 & 12 Geo. 3, c. 8, s. 41; 54 Geo. 3, c. 159, s. 25; 1 Geo. 4, c. 81, s. 15; and 1 & 2 Will. 4, c. 33, s. 93.—Quarantine, 6 Geo. 4, c. 78, s. 29.—Shannon improvement, 5 & 6 Will. 4, c. 67, s. 11.—Valuation of land in Ireland, 6 & 7 Will. 4, c. 84, s. 28. For false swearing before the deputy keeper of the rolls, and clerk of the inrolments in chancery, see 4 & 5 Will. 4, c. 78, s. 10.

(a) Entitled, "*An act to repeal an act of the present session of parliament, intituled an act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra judicial oaths and affidavits; and to make other provisions for the abolition of unnecessary oaths.*"

7. [*Oaths still to be taken in courts of justice.*]

5 & 6 W. 4, c.  
62.

8. [*All corporations and bodies now authorized to administer oaths, may make by-laws or orders substituting a declaration.*]

9. [*The oaths of churchwardens and sidesmen abolished, and a declaration substituted.*]

10. [*So also in matters relating to turnpike trusts.*]

11. [*And previous to taking out a patent for an invention.*]

12. [*Declaration substituted for oaths &c., required by acts relating to pawnbrokers.*]

13. And whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial inquiry, nor in any wise pending or at issue before the justice of the peace or other person by whom such oaths or affidavits have been administered or received: and whereas doubts have arisen whether or not such proceeding is illegal; for the more effectual suppression of such practice and removing such doubts, be it enacted, that from and after the commencement of this act, it shall not be lawful for any justice of the peace or other person to administer, or cause or allow to be administered, or to receive, or cause or allow to be received, any oath, affidavit, or solemn affirmation, touching any matter or thing whereof such justice or other person hath not jurisdiction or cognizance by some statute in force at the time being: Provided always, that nothing herein contained shall be construed to extend to any oath, affidavit, or solemn affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences, or touching any proceedings before either of the houses of parliament or any committee thereof respectively, nor to any oath, affidavit, or affirmation which may be required by the laws of any foreign country, to give validity to instruments in writing designed to be used in such foreign countries respectively.

Justices not to administer oaths except where jurisdiction is given them by statute.

Proviso.

16. That it shall and may be lawful to and for any attesting witness to the execution of any will or codicil, deed, or instrument in writing, and to and for any other competent person, to verify and prove the signing, sealing, publication, or delivery of any such will, codicil, deed, or instrument in writing, by such declaration in writing made as aforesaid; and every such justice, notary, or other officer shall be and is hereby authorized and empowered to administer or receive such declaration.

Declaration in writing sufficient to prove execution of any will or deed.

18. And whereas it may be necessary and proper, in many cases not herein specified, to require confirmation of written instruments or allegations, or proof of debts, or of the execution of deeds or other matters; be it therefore further enacted,

Making untrue declaration; misdemeanor.



5 & 6 W. 4, c. 62. that it shall and may be lawful for any justice of the peace, notary public, or other officer now by law authorized to administer an oath, to take and receive the declaration of any person voluntarily making the same before him, in the form in the schedule to this act annexed (a); and if any declarations so made shall be false or untrue in any material particular, the person wilfully making such false declaration, shall be deemed guilty of a misdemeanor.

19. [*All fees payable on oaths, affirmations, or affidavits, shall be payable upon declarations.*]

Declaration  
to be as in  
schedule.

20. That in all cases where a declaration in lieu of an oath shall have been substituted by this act, or by virtue of any power or authority hereby given, or where a declaration is directed or authorized to be made and subscribed under the authority of this act, or of any power hereby given; although the same be not substituted in lieu of an oath heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the schedule hereunto annexed.

Making false  
declaration;  
misdemeanor.

21. That in any case where a declaration is substituted for an oath under the authority of this act, or by virtue of any power or authority hereby given, or is directed and authorized to be made and subscribed under the authority of this act, or by virtue of any power hereby given; any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

Swearing or  
declaring  
falsely under  
civil bill act;  
perjury.

6 & 7 Will. 4, c. 75 (b), s. 60.—That if any person taking an oath, or making a declaration or affirmation in any action, examination, or other proceeding under the provisions of this act, shall wilfully and corruptly swear, declare, or affirm falsely, he shall be deemed guilty of perjury, and shall be liable to be prosecuted and punished accordingly: and if, in any such action, examination, or other proceeding, the assistant barrister shall deem any witness or party to have so far wilfully and

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(a) SCHEDULE. I, A. B. do solemnly and sincerely declare that  
; and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the                      year of the reign of his present majesty, intituled, “An act [*here insert the title of this act.*]

(b) Entitled, “*An act to extend the jurisdiction, and regulate the proceedings of the civil bill courts in Ireland.*”

corruptly sworn, declared, or affirmed falsely, as that, in his opinion, such witness or party ought to be prosecuted at the expense of the county within which the witness or party shall have so sworn or affirmed or declared, and shall certify such opinion in writing; then and in every such case, if any prosecution takes place, the court in which such prosecution shall take place shall make an order for payment of the expenses of such prosecution by the treasurer of the county.

6 & 7 W. 4, c. 60.

Assistant barrister may order prosecution at expense of the county.

63. [*The powers by this act conferred on assistant barristers shall be exercised in the county of Dublin, by the chairman; and in the city of Dublin by the recorder; and the duties directed to be performed by the clerk of the peace shall be there discharged by the register, and clerk or register of civil bills, respectively.*]

#### SECTION 4.

##### Extortion.

3 *Edw. 1, c. 21, Eng.*—And that no sherriff, nor other the king's officer, take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth, shall yield twice as much, and shall be punished at the king's pleasure.

King's officer shall not commit extortion.

1 *Hen. 4, c. 11, Eng. (pars.)*—(3) And if any sheriff from henceforth do any extortion to the people, and be thereof attainted, he shall be duly punished for the same extortion at the king's will.

Extortion by sheriffs.

57 *Geo. 3, c. 56, s. 23.*—That no sheriff, under-sheriff, bailiff, or other person employed in levying or collecting any of the said debts or sums of money (*a*), shall ask or take or receive any fee, gift, gratuity, or reward whatsoever, of the person or persons liable to pay the same, nor of any other person, for or upon pretence of such levying or collecting, or for or upon pretence of forbearing to levy or collect the same, or any part or proportion thereof; and in case any sheriff shall nihil, or not duly answer to the crown any debt or sum of money which shall have been levied, collected, or received by him, such sheriff, for every such offence, shall forfeit treble

Sheriffs shall receive no fee for levying or forbearing to levy, under process of the pipe.

(a) Viz. The amount of fines and forfeited recognizances.

17 G. 3, c. 36. damages to the party aggrieved, and double the sum nihil'd and not duly answered as aforesaid, to his majesty, his heirs, and successors; which said damages and penalty shall be ordered, decreed, and given by the Court of Exchequer, on complaint and proof of such abuse as aforesaid made and exhibited before the barons of the said court, in such summary way and method as to them shall seem meet; and in case any sheriff, under-sheriff, bailiff, or other person so employed as aforesaid, shall demand, take, or receive any sum or sums of money, gift, gratuity, or reward of any kind whatsoever, or any security, promise, or engagement of or for any sum or sums of money, fee, gift, gratuity, or reward of any kind whatsoever, be the same more or less, of any person whomsoever, for or in respect or upon pretence of executing any green wax process of the Court of Exchequer in Ireland, or for or in respect or upon pretence of fees due to them or any of them, for collecting or receiving the same, or for not executing, or for delaying to execute any such process, or any warrant issued thereon; or shall accept of a less sum upon account, or in payment or discharge of any such process or warrant, than as in such warrant or process is mentioned; then and in all and every such case, every person so offending, and being thereof lawfully convicted, shall be deemed guilty of extortion; and every person, being thereof lawfully convicted, shall forfeit for every such offence, to the party aggrieved in such process or warrant, the amount of the sum ordered to be levied by such process or warrant, and double the sum so extorted, together with full costs of suit, to be recovered by action of debt, bill, plaint, or information in any of the superior courts of record in Dublin.

Sheriff taking  
fee on exe-  
cuting green  
wax process;  
extortion.

24. [*The Court of Exchequer may award and order damages, costs, and penalties summarily, to any person charged in such process*] and thereupon such offender shall not be liable to any action or indictment for such offence. [*The order shall have the same effect and force as any other order of the court; and obedience to it may be similarly enforced.*]

Penalty for  
taking gaol  
fees, &c.

1 & 2 Geo. 4, c. 77 (a), s. 7.—That if any clerk of the crown, or clerk of the peace, or any of their deputies, or any sheriff or under sheriff, or any gaoler or under gaoler, or any turnkey or crier at assizes or sessions, or any person acting under

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(a) Entitled, "An act to abolish the payment by prisoners in Ireland, of gaol fees, and all other fees relating to the commitment, continuance, trial, or discharge of such prisoners, and to prevent abuses by gaolers, bailiffs, and other officers."

them or any of them, shall demand, take, or accept any fee, gratuity, or reward whatever, directly or indirectly, on the commitment, custody, trial, or discharge of any prisoner, or for any matter or thing whatsoever relating thereto, contrary to the directions of this act; each and every person so offending shall, for each and every such offence, forfeit the sum of five pounds, British currency, to be recovered in any of his majesty's courts of record in Dublin, by action of debt, bill, or plaint, in which no essoign, protection, or wager of law, nor more than one imparlance shall be allowed; or by civil bill, to be heard and determined by the assistant-barristers at the sessions of the peace in such counties where the said offences shall be committed.

1 & 2 G. 4,  
c. 77.

8. Provided always, and be it enacted, that nothing in this act contained shall extend to the marshalsea of the four courts of the city of Dublin, nor to the marshalsea of the city of Dublin. Proviso for marshalsea.

9. And for the more speedy punishing gaolers, bailiffs, and others employed in the execution of any process, civil or criminal, for extortion or other abuses in their respective offices and places; be it further enacted, that upon the petition of any prisoner or person, being or having been under arrest or in custody, complaining of any exaction or extortion by any gaoler, bailiff, or other officer or person in or employed in the keeping or taking care of any gaol or prison, or other place, to which any such prisoner or person, under or having been under arrest or in custody, by any process, civil or criminal, or in any suit or action, is or shall have been carried, or in respect of the arresting or apprehending any person or persons, by virtue of any process, action, or warrant, or of any other abuse whatsoever, committed or done in their respective offices or places, such petition being presented in term time unto any of his majesty's courts of record in Dublin, from whence the process issued, by which any person who shall so petition was arrested, or under whose power or jurisdiction any such gaol, prison, or place is, or in vacation time, to any judge of such court from whence such process so issued, or upon petition to the judges of assize in their respective circuits, or to the judge or judges of any other court of record, where any prisoner or person, being or having been under arrest or in custody, was arrested or in custody by process issued out of, or action entered in any such other court of record in Ireland; every such court or judge, and every judge of assize, and judge and judges of other courts of record as aforesaid, are hereby authorised and required respectively, within their several jurisdictions, to hear and determine the matter of such petition and complaints in a summary way, and to make such order thereupon, for redressing the abuses which shall by any such petition be complained of, and for punishing such officer or person complained against, and for making reparation to the party or parties injured, as such courts or judges shall think just, together with the full costs of every such complaint, where such courts or judges shall think the same to be just; and all determi-

Extortion  
&c. by gaol-  
ers &c.; pun-  
ishable sum-  
marily.

1 & 2 G. 4,  
c. 77.

nations which shall be thereupon made by any of the said courts or judges as aforesaid respectively, in such summary way as is herein prescribed, shall have the same effect, force, and virtue, and obedience thereunto may be enforced by the respective courts and judges, by attachment, or in any other manner, as other orders of the said respective courts and judges may be enforced.

Clerks of  
justices shall  
not commit  
extortion.

3 *Edw.* 1, c. 27, *Eng.*—And that no clerk of any justicer, escheator, or inquiror, shall take any thing for delivering chapiters, but onely clerks of justices in their circuits, and that i. s. and no more. (2) Of every wapentake, hundred, or town that answereth by twelve, or by six, according as it hath been used of old time. (3) And he that doth contrary shall pay thrice so much as he hath taken, and shall lose the service of his master for one year.

Extortion  
by coroners.

3 *Edw.* 1, c. 10, *Eng.* (*pars.*)—And forasmuch as mean persons and undiscree, now of late, are commonly chosen to the office of coroners, where it is requisite that persons honest, lawful, and wise should occupy such offices: it is provided, that through all shires sufficient men shall be chosen to be coroners, of the most wise and discreet knights, which know, will, and may best attend upon such offices, and which lawfully shall attach and present pleas of the crown. (3.) And that no coroner demand nor take any thing of any man to doe his office upon pain of great forfeiture to the king.

Extortion  
by coroners;  
loss of office.

3 *Geo.* 4, c. 115, s. 7.—That if any coroner in Ireland shall, from and after the passing of this act, be lawfully convicted of extortion, or wilful neglect of duty or misdemeanour in his office, it shall be lawful for the court, before whom he shall be so convicted, to adjudge that he shall be removed from his office; and thereupon a writ shall issue, removing him from his office, and electing another coroner in his stead.

Proviso for  
coroners in  
counties of  
cities and  
towns, and  
in Kinsale.

8. That nothing herein contained shall extend, or be deemed, construed, or taken to extend to any coroner to be elected, or who has been already elected to the office of coroner for any county of a city or county of a town in Ireland, or to the town and liberties of Kinsale, nor to interfere with any right of appointment of coroner given by charter to any corporation in Ireland.

No fee, save  
salary, to ac-  
countant ge-  
neral or clerk  
of reports.

23 and 24 *Geo.* 3, c. 22, s. 6.—Provided also, and be it enacted, that all such duties, matters, or things, as are hereby directed, imposed, or prescribed to be done or performed by such accountant-general and clerk of the reports (*a*), or either of them, shall be by them performed without any fee, perquisite, gratuity, or reward, other than the annual salaries to be annexed to their respective offices; and if the said accountant-general and clerk of the reports, or either of them, or any person on their or either

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(a) Viz. of the court of Chancery.

of their behalf, shall demand or accept any fee, gratuity, or reward, from any suitor of the said court, or any person whatsoever, contrary to the true intent and meaning hereof, such accountant-general or clerk of the reports, so offending, shall, upon conviction thereof, be deprived of the said offices respectively, and shall be deemed incapable of serving his majesty in any civil office whatsoever, over and above any punishment which may be inflicted upon them respectively for such misdemeanor by the court before whom such person shall be tried.

23 & 24 G. 3,  
c. 22.

Penalty.

16. That it shall and may be lawful to and for his majesty, his heirs and successors, from time to time, to appoint an accountant-general and clerk of the reports of the Court of Exchequer, with such reasonable salaries respectively as to him or them shall seem meet; which accountant-general, and clerk of the reports respectively, shall be subject to, and perform all such duties, regulations, acts, and directions touching and concerning the monies and securities of the suitors of the said Court of Exchequer, in like manner, and under such restrictions and penalties as are hereinbefore prescribed, imposed, or directed to be done and performed by the accountant-general and clerk of the reports of the court of Chancery respectively, touching and concerning the monies and securities of the said court.


The king  
may appoint  
an account-  
ant general  
of the court  
of exche-  
quer, subject  
to like regu-  
lations as in  
chancery.

4 Geo. 4, c. 61, s. 56, [and c. 70, s. 51, as to the Court of Exchequer.]—That from and after the commencement of this act, it shall and may be lawful for the said accountant-general (a), by himself or his clerks, to ask, demand, and receive, for all copies of all accounts extracted from the books of the said accountant-general, the sum of two pence for every line on the debtor side of such account, and the like sum of two pence for every line on the creditor side of such account, if the said account shall consist of forty lines, or any less number, on each side of the said account; and if the said account shall consist of any greater number of lines than forty on each side of the said account, then the sum of one pound and no more; and that from and after the commencement of this act, it shall not be lawful for the said accountant-general, or any clerk or other person in his office, to ask, demand, or receive any fee for any certificate of any balance of stock or cash on any account in the books of the said accountant-general, nor for any other business, matter, or thing whatsoever in or relating to the office of the said accountant-general; and if any clerk or other person belonging to, or employed in, or who shall hereafter belong to, or be employed in the office of such accountant-general, shall take any other fee or reward on account of any business, matter, or thing whatsoever in or relating to the office of accountant-general, or do the duty of any clerk therein; every such person shall be deemed guilty of extortion, and shall and may be pro-

What fees  
the account-  
ant general  
may take.

Taking other  
fees, extor-  
tion.

(a) Viz. of the Court of Chancery or Exchequer.

4 G. 4, c. 61.  secuted for the same by indictment or information, or upon complaint thereof made to the said court of Chancery [or Exchequer], shall be punished for the same as for a contempt of the said court, and shall forfeit the sum of fifty pounds.

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### SECTION 5.

### *Maintenance and Champerty.*

Mainten-  
ance.

28 *Edw. 1, stat. 3, c. 11, Eng.*—And further, because the king hath heretofore ordained by statute, that none of his ministers shall take no plea for maintenance; by which statute other officers were not bounden before this time: (2) The king will, that no officer nor any other (for to have part of the thing in plea) shall not take upon him the business that is in suit. (3) Nor none, upon any such covenant, shall give up his right to another. (4) And if any do, and be attainted thereof, the taker shall forfeit unto the king, so much of his lands and goods as doth amount to the value of the part that he hath purchased for such maintenance. (5) And to obtain this, whosoever will, shall be received to sue for the king before the justices before whom the plea hangeth, and the judgment shall be given by them. (6) But it may not be understood hereby, that any person shall be prohibit to have counsel of pleaders, or of learned men in the law for his fee, or of his parents and next friends.

1 *Edw. 3, stat. 2, c. 14, Eng.*—Item, Because the king desireth that common right be administered to all persons, as well poor as rich, he commandeth and defendeth, that none of his counsellors, nor of his house, nor none other of his ministers, nor no great man of the realm, by himself nor by other, by sending of letters, nor otherwise, nor none other in this land, great nor small, shall take upon them to maintain quarrels nor parts in the countrey, to the let and disturbance of the common law.

Champerty.

33 *Edw. 1, stat. 3, Eng.*—Where it is contained in our statute, that none of our court shall take any plea to champerty by craft nor by engine. (2) And that no pleaders, apprentices, attornies, stewards of great men, bailiffs, nor any other of the realm, shall take for maintenance or the like bargain, any manner of suit or plea against other, whereby all the realm is much grieved, and both rich and poor troubled in divers manners. (3) It is provided by a common accord, that all such as from henceforth shall be attainted of such emprises, suits, or bargains, and such as consent thereunto, shall have imprisonment of three years, and shall make fine at the king's pleasure.

## SECTION 6.

*Misconduct of Officers of Justice and others.*

14 *Edw. 3. c. 10, Eng.*—Item, In the right of the gaols, which were wont to be in ward of the sheriffs, and annexed to their bailiwicks: (2) It is assented and accorded, that they shall be rejoined to the sheriffs, and the sheriffs shall have the custody of the same gaols, as before this time they were wont to have; (3) And that they shall put in such keepers for whom they will answer. (4) And if it happen that the keeper of the prison, or under-keeper, by too great duress of imprisonment, and by pain, make any prisoner that he hath in his ward to become an appellor against his will, and thereof be attainted, he shall have judgment of life and of member. (5) And that the king's justices before whom such cases shall happen, shall enquire the truth thereof: (6) And if they find, by inquest thereupon taken, that any keeper or under-keeper hath done the same, he shall be thereof arraigned; and if he be found guilty, he shall have judgment of life and member, as afore is said.

Felony, for a gaoler to compel a prisoner to become an approver.

8 *Rich. 2, c. 4, Eng.*—Item, At the complaint of the said commualty made to our lord the king in the parliament, for that great disherison in times past was done of the people, and may be done by the false entring of pleas, razing of rolls, and changing of verdicts: (2) It is accorded and assented, that if any judge or clerk be of such default (so that by the same default there ensueth disherison of any of the parties) sufficiently convict before the king and his council, by the manner and form, which to the same our lord the king and his council shall seem reasonable, and within two years after such default made, if the party grieved be of full age, and if he be within age, then within two years after that he shall come to his full age, he shall be punished by fine and ransom at the king's will, and satisfie the party. (3) And as to the restitution of the inheritance desired by the said commons, the party grieved shall sue by writ or otherwise, according to the law, if he see it expedient for him.

Judge or clerk, making false entry of pleas, razing rolls, or changing verdicts.

1 *Geo. 3. c. 11, s. 1.*—Whereas it frequently happens that great abuses are committed by justices of peace acting under the charters of cities and towns corporate, and, notwithstanding such abuses, it may be a doubt whether such justices of the peace so offending are or may be removeable from their offices, or the execution thereof, by any law now in being: for remedy whereof, be it &c., that if any such justice shall wilfully commit any offence, contrary to his duty as a justice of peace, every such justice shall, upon conviction of such offence, on an information to be filed in the court of King's Bench, be for ever disabled to act as a justice of the peace for or within such city or town corporate, in case the court or judge, before whom such informa-

J. P. in town corporate, convicted of improper conduct, shall be incapacitated, if



1 G. 3, c. 11. **tion shall be tried, shall, in open court, before the same is adjourned, certify under his or their hand or hands, that he or they is or are satisfied with the verdict given upon such information.**

judge  
satisfied with  
the verdict.

The trial to  
be in an in-  
different  
county.

Act not to  
extend to  
J. P. ap-  
pointed by  
commission.

2. That the trial of all such informations shall be had in some indifferent county, to be appointed by the court of King's Bench.

3. Provided always, that nothing in this act contained shall extend to justices of the peace, who are or shall hereafter be appointed by virtue of any commission of the peace issued or to be issued by his majesty, his heirs and successors.

Clerk of the  
crown, ne-  
glecting his  
duty as  
herein.

13 & 14 Geo. 3, c. 18, s. 14.—And whereas it is expedient to prevent the mischiefs that may arise from the clerk of the crown neglecting his duty in respect of presentments; be it &c., that every clerk of the crown shall, without fee or reward, at each assizes (or term, if in the county of Dublin,) enter a copy of the treasurer's account in manner herein directed, and shall also, without fee or reward, immediately after the query book shall be ruled by the judge of assize (or court of King's Bench, if in the county of Dublin,) give to the treasurer a full and perfect copy of all queries discharged at said assizes or term, signed by himself or his deputy; and shall, within four days after each assizes (or issuable term), give to the treasurer a copy of all the presentments made and allowed at said assizes or term for the raising or paying of money, signed likewise by himself or his deputy; and in case he shall neglect to give the same or either of them at the times aforesaid, or to enter the said account, or the gross amount of the queries on the query book for said assizes or term at the foot thereof, and proof of any such neglect shall be made to the satisfaction of the judge of assize, or of the court of King's Bench, if in the county of Dublin, he shall be fined in any sum not exceeding five pounds, and be suspended from his office until he shall pay the same. And every clerk of the crown shall, within two month safter each assizes, (or term, if in the county of Dublin,) make up the queries for the succeeding assizes or term, when he shall make affidavit in writing before one of the judges of assize, (or judge of the King's Bench, if in the county of Dublin,) that he has entered a full, true, and exact query in the query book upon every presentment for raising or paying money, and every fine whatever which has not been accounted for or discharged, which affidavit shall be delivered to the clerk of the peace, to be by him kept and preserved; and if he shall omit to carry forward every query, which shall not have been discharged, together with such order as shall have been made by the court thereupon, or shall neglect or omit to enter a full, true, and exact query upon every one presentment, made at the last assizes, (or term, if in the county of Dublin,) for raising and paying money, and likewise to frame a query in the query book upon every fine imposed, wherein the county is entitled to any shares, specifying how much thereof the county is

entitled unto, and from time to time to carry forward the same, unless discharged, or shall efface, obliterate, tear, alter, destroy, or suppress any record of the county, or shall refuse to make such affidavit as aforesaid; he shall, if convicted thereof by indictment or presentment, be fined in any sum not exceeding one hundred pounds, and be dismissed from his office of clerk of the crown; any law, grant, or custom to the contrary notwithstanding, and be incapable of ever after serving in said office.

13 & 14 G. 3,  
c. 18.

25 Geo. 3, c. 53, s. 3.—That every attorney or solicitor, who shall, after the twenty-fourth day of June aforesaid, sue out any such writ of scire facies (a) on behalf of his majesty, his heirs or successors, and shall omit to comply with the provisions of this act above-mentioned (b), shall, for every such offence, forfeit and lose the sum of one hundred pounds, and be liable to an action at the suit of any party injured by such neglect or omission.

Attorney,  
not comply-  
ing with this  
act.

4. That if any printer or printers, publisher or publishers of any public newspaper, shall refuse or omit to receive, take, print, and publish any such copy as above-mentioned, of any such writ of scire facias, upon the usual price or payment being tendered to him, her, or them, by the person offering such copy or copies as aforesaid, for insertion and publication; he, she, or they shall, for every such refusal or omission, forfeit and lose the sum of five hundred pounds, and be for ever incapable of printing or publishing any newspaper within the kingdom of Ireland; and shall also, being duly convicted thereof, suffer six months' imprisonment; and shall also be liable to an information at the suit of his majesty, his heirs or successors, in his majesty's court of Exchequer, for the recovery and satisfaction of any damage or loss sustained by his majesty, his heirs or successors, by reason of such refusal or omission.

Printers re-  
fusing to  
publish writs  
of scire facias  
on usual  
terms.

Penalty.

31 Geo. 3, c. 31, s. 4.—That from and after the time aforesaid (c), if any cattle or goods shall be taken and carried away, under colour of any decree obtained upon any civil bill, between the hours of sunset and sunrise; the person or persons so taking and carrying away the same, shall be deemed guilty of a misdemeanour, and being convicted thereof, suffer such punishment by imprisonment, whipping, or otherwise, as to the judge or judges, who† in their discretion shall seem meet; and in any indictment for this offence, it shall be sufficient to allege generally that the party or parties, fraudulently and contrary to the intent of this act, carried away such cattle or goods between the hours

Seizing  
cattle or  
goods under  
color of civil  
bill decree,  
between sun-  
set and sun-  
rise.

+ Sic.

(a) Viz. a *Scire facias* against the heir and tertenants of a deceased crown debtor.

(b) By s. 1, he is directed, before delivery of the writ to the Sheriff, to insert a true copy of it in the Dublin Gazette and in three other Dublin newspapers, and also (in case the writ shall be directed to the Sheriff of any county, county of a city or town, other than the city of Dublin,) in every newspaper in such county, city, or town.

(c) 1 June, 1791.

31 G. 3, c. 31. of sunsetting and sunrising, without describing more particularly the circumstances of such offence; and the property of goods and cattle so taken, shall not be altered by any sale thereof.

To extend to the county and city of Dublin.

Stealing records, &c. a misdemeanour.

5. That the provisions of this act shall extend to civil bills and decrees issued by, or obtained at the quarter sessions of the county, or county of the city of Dublin.

9 Geo. 4, c. 55, s. 21.—That if any person shall steal, or shall, for any fraudulent purpose, take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, or any part of any such document, of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such court, or any bill, answer or interrogatory, deposition, affidavit, order or decree, or any original document whatsoever, of or belonging to any court of equity, or relating to any cause or matter begun, depending, or terminated in any such court, or any part thereof respectively, or any original document, or part of any original document in any wise relating to, or concerning the business of any person or persons holding any office or employment under his majesty, and remaining or deposited for safe custody in any office appertaining to any court of justice. or in his majesty's castle of Dublin, or in any of his majesty's custom houses, post offices, or other public offices in Ireland; every such offender shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award: and it shall not be necessary to allege in any indictment, or to prove on any trial for such offence, that the article, in respect of which the offence is charged to have been committed, is the property of any person, or that the same is of any value; nor shall it be the subject of enquiry at the trial of any such offence, whether the thing charged to have been stolen is or is not of any intrinsic value.

Embracery and corrupt jurors punishable by fine and imprisonment.

3 & 4 Will. 4, c. 91(a), s. 48.—Provided always, and be it enacted and declared, that notwithstanding any thing herein contained, every person who shall be guilty of the offence of embracery, and every juror who shall wilfully or corruptly consent thereto, shall and may be respectively proceeded against by indictment or information, and be punished by fine and imprisonment in like manner as every such person and juror might have been before the passing of this act.

[*Pardon, p. 12. Removing goods to another part of the united kingdom, p. 14.*]

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(a) Entitled "*An Act for consolidating and amending the laws relative to jurors and juries in Ireland.*"

## SECTION 7.

*Compounding Felony.*

9 Geo. 4, c. 55, s. 51.—That every person who shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted as aforesaid, shall, (unless he cause the offender to be apprehended and brought to trial for the same,) be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

Taking a reward to help to stolen property; felony.

52. That if any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall, in such advertisement, use any words purporting that no questions will be asked; or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing, or making any inquiry after the person producing such property; or shall promise or offer in any such public advertisement, to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property; or if any person shall print or publish any such advertisement; in any of the above cases, every such person shall forfeit the sum of fifty pounds for every such offence, to any person who will sue for the same, by action of debt, to be recovered with full costs of suit.

Advertising a reward for the restoration of stolen property without enquiry.

## SECTION 8.

*Subsequent Felony.*

9 Geo. 4, c. 54, s. 21.—And whereas it is expedient to provide for the more exemplary punishment of offenders, who commit felony after a previous conviction of felony, whether such conviction shall have taken place before or after the commencement of this act; be it therefore enacted, that if any person shall be convicted of any felony not punishable with

Punishment on a second conviction for felony.

9 G. 4, c. 54.

Requisite of indictment.

Evidence.

Signing or uttering false certificate of former conviction; felony.

A previous conviction not to be

death, committed after a previous conviction for felony, such person shall, on such subsequent conviction, be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment; and in any indictment for any such felony committed after a previous conviction for felony, it shall be sufficient to state, that the offender was, at a certain time and place, convicted of felony, without otherwise describing the previous felony; and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer (for which certificate a fee of six shillings and eight pence, and no more, shall be demanded or taken,) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any clerk, officer, or deputy, shall utter any false certificate of any indictment and conviction for a previous felony, or of any sentence or order of transportation or banishment; or if any person other than such clerk, officer, or deputy shall sign any such certificate as such clerk, officer, or deputy, or shall utter any such certificate with a false or counterfeit signature thereto; every such offender shall be guilty of felony, and being lawfully convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit), in addition to such imprisonment.

22. That all offences prosecuted in the high court of admiralty of Ireland, shall, upon every first and subsequent conviction, be subject to the same punishment, whether of death or otherwise, as if such offences had been committed upon the land.

6 & 7 Will. 4, c. 111. [*Recites 7 & 8 Geo. 4, c. 28, Eng., to which the 9 Geo. 4, c. 54, s. 21, Ir., corresponds.*] And whereas since the passing of the said act, the practice has been, on the trial of any person for any such subsequent felony, to charge the jury to inquire at the same time concerning such previous conviction: and whereas doubts may be reasonably entertained, whether such practice is consistent with a fair and impartial inquiry, as regards the matter of such subsequent felony, and it is expedient that such practice should from henceforth be discontinued: be it, &c., that from and after the passing of this act, it shall not be lawful, on the trial of any person for any such subsequent felony, to charge the jury to

inquire concerning such previous conviction, until after they shall have inquired concerning such subsequent felony, and shall have found such person guilty of the same; and whenever in any indictment such previous conviction shall be stated, the reading of such statement to the jury as part of the indictment shall be deferred until after such finding as aforesaid: provided nevertheless, that if, upon the trial of any person for any such subsequent felony as aforesaid, such person shall give evidence of his or her good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the indictment and conviction of such person for the previous felony, before such verdict of guilty shall have been returned; and the jury shall inquire concerning such previous conviction for felony, at the same time that they inquire concerning the subsequent felony.

6 & 7 W. 4,  
c. 111.

given in charge, until after the finding for a subsequent felony, except after evidence of good character.

## SECTION 9.

### Accessories.

9 Geo. 4, c. 54, s. 23.—And for the more effectual prosecution of accessories before the fact to felony; be it enacted, that if any person shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made; the person so counselling, procuring, or commanding, shall be deemed guilty of felony, and may be indicted and convicted as an accessory before the fact to the principal felony, either together with the principal felon, or after the conviction of the principal felon; or may be indicted for, and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and may be punished in the same manner as an accessory before the fact to the same felony, if convicted as an accessory, may be punished: and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas, or at any place on land, whether within his majesty's dominions or without; and in case the principal felony shall have been committed within the body of any county, and the offence of counselling, procuring, or commanding, shall have been committed within the body of any other county, the last mentioned offence may be enquired of, tried, determined, and punished in

Accessory before the fact, may be tried as such, or as a principal felon, by any court which has jurisdiction to try the principal felon.

If the offences of principal and such accessory be in different counties, the

9 G. 4, c. 54.

latter may be tried in either.

Accessory after the fact may be tried by any court which has jurisdiction to try the principal felon.

If the offences of principal and such accessory be in different counties, the latter may be tried in either.

Accessory may be proceeded against, after conviction and before attainder of principal.

either of such counties. Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

24. And for the more effectual prosecution of accessories after the fact to felony, be it enacted, that if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made; the offence of such person may be enquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if the act, by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such act may have been committed either on the high seas, or at any place on land, whether within his majesty's dominions or without; and that, in case the principal felony shall have been committed within the body of any county, and the act, by reason whereof any person shall have become accessory, shall have been committed within the body of any other county, the offence of such accessory may be enquired of, tried, determined, and punished in either of such counties. Provided always, that no person who shall be once duly tried of any offence of being an accessory, shall be liable to be again indicted or tried for the same offence.

25. And in order that all accessories may be convicted and punished, in cases where the principal felon is not attainted; be it enacted, that if any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if such accessory be in anywise convicted, as such accessory should have suffered, if the principal had been attainted.

[Vide 9 Geo. 4, c. 55, s. 54, ante 9.]

## GENERAL RULE

### *Of Interpretation of Criminal Statutes.*

9 Geo. 4, c. 54, s. 35.—That whenever, in this act or in any other act relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence, or the subject matter on or with respect to which it shall be committed, or the offender, or the party affected or in-



tended to be affected by the offence, any word or words have been or shall be used or employed, importing the singular number or the masculine gender only; every such act shall be understood to include several matters of the same kind as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals; unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and wherever any forfeiture or penalty is or shall be made payable to a party aggrieved, it shall be payable to a body corporate, in every case where such body shall be the party aggrieved.

Before closing this branch of the subject of criminal law, it may not be improper to make a few observations upon the several degrees of crime, as recognized by the law of Ireland:

NOTE.

Crimes have been divided into three classes, according to their supposed flagrancy, and are either treasons, felonies, or misdemeanors.

1. *Treason*.—This class was formerly subdivided into high treason and petty treason. The distinction, however, has been abolished by the 10 Geo. 4, c. 34, s. 3, *ante* 81, by which petty treason is to be deemed murder. Several offences relating to the coin were formerly deemed high treason, but by 2 Will. 4, c. 34, *ante* 117, all such offences are made either felonies or misdemeanors. The only crimes, therefore, which are now punishable as treason, are those committed by the subject directly against his allegiance. They will be found enumerated in the several statutes on the subject, (*ante* 99, *et seq.*) All persons concerned in high treason are principals. 2 Hawk. c. 29, s. 2. But a bare knowledge and concealment of treason, without any assent thereto, amounts only to a misprision, and is punishable as a misdemeanor. 4 Bl. Com. 120. All persons indicted for high treason, under the 25 Edw. 3, (*ante* 99,) shall, if they desire it, have counsel (not exceeding two,) assigned them by the court, by whom they shall be permitted to make a full defence, and may also have a copy of the indictment, five days before the trial. 5 Geo. 3, c. 21, *ante* 101. The number of peremptory challenges allowed to a prisoner in treason and felony is limited to twenty. 9 Geo. 4, c. 54, s. 9. The punishment annexed by law to this offence is death: the manner of which is described by the 54 Geo. 3, c. 146, *ante* 113. No person charged with treason can be admitted to bail, except by the King's Bench. 4 Bl. Com. 298; *R. v. Wyndham*, Str. 2; *R. v. Yates*, Holt 83. When a per-



**NOTE.** son has been convicted by the jury of treason or felony, or has been put in exigent after indictment found for either of those crimes, all his goods and chattels become forfeited to the crown; and all his rights of action, except those for a wrong to his person, as a battery, and all debts owing to him, and all securities for money; but not the goods which he has as executor or administrator. *Com. Dig. Forfeiture, B. 2*; *2 Hawk. c. 49, ss. 13, 15*; *4 Bl. Com. 387*; *Batty v. Fay, Ir. T. R. 511*; *Bullock v. Dodds, 2 B. & Ald. 258*; *Lambert v. Taylor, 4 B. & Cr. 138*. He forfeits also those goods which he may have fraudulently conveyed away, in prospect of a conviction, and to avoid a forfeiture. *Morewood v. Wilkes, 6 C. & P. 144*. The goods so forfeited immediately become vested in the crown, *Bullock v. Dodds, 2 B. & Ald. 258*; and without being subject to the debts of the felon, *Megit v. Johnson, Dougl. 542*; and the sheriff may seize them to the king's use, *Com. Dig. Forfeiture, B. 4*.

When judgment is pronounced against the party accused of treason or felony, he thenceforward becomes *attainted*. *4 Bl. Com. 381*. In treason the consequences of attainder are forfeiture of all freehold estates of inheritance which he had at the time of the treason committed, or at any time after; and also the profits of all lands which he had in his own right for life or years, so long as such interest subsists—corruption of blood—and infamy as a witness. The party in fact becomes *civili-ter mortuus*, and, if a peer, also forfeits his dignity. So also he forfeits his right of entry into any lands, and also all annuities of inheritance. But he does not forfeit the lands or hereditaments which he holds in *auter droit*, or as trustee for another; nor does his wife lose her jointure. *28 Hen. 8, c. 7, s. 4, ante 104*; *4 Bl. Com. 381, 388*; *Com. Dig. Forfeiture, B. 1, Dignity, E*; *4 & 5 Will. 4, c. 23, s. 3*.

2. *Felony*.—Forfeiture has long been considered the distinguishing characteristic of offences of this class; and so generally did it prevail, that petit larceny is the only felony which did not entail forfeiture as one of the legal consequences of its commission. *Com. Dig. Forfeiture, B. 3*. Suicide being a felony, induced a forfeiture of goods; but, there being no attainder, the realty was exempt. *3 Inst. 55*.

In felony, where there is no corruption of blood, there can be no forfeiture of lands; for that is only by way of escheat, for defect in the descent by reason of the corruption of blood. *Lovell's Case, 1 Salk. 85*. Since the *54 Geo. 3, c. 145*, murder is the only crime which occasions a corruption of blood. Upon attainder therefore, for murder, the party forfeits to the crown all the profits of his freehold lands during his life, and also, "the year day and waste" after his death, in those lands of which he was seized in fee-simple; but this prerogative does not extend to the lands of which he was seized in fee tail, or for life, or years, or as trustee, or mortgagee, *Com. Dig. Ann jour & wast; 9 Hen. 3, (Mag. Ch.) c. 22*; *4 & 5 Will. 4, c. 23, s. 3*;

NOTE.

4 *Bl. Com.* 385. Estates of freehold are not devested by attainder until office found; and an ejectment may be maintained upon the demise of a person so attainted. *Doe d. Griffith v. Pritchard*, 5 *B. & Adol.* 781.

Formerly the punishment of death was considered as annexed to every felony higher than petit larceny; and so, when acts of parliament provide that persons guilty of certain offences shall suffer death, or shall have judgment of life and member, such offences are thereby made felonies, 1 *Hale*, 703; 1 *Hawk*, c. 7, s. 5: and where a statute declared that the offender should be deemed to have feloniously committed the act, it made the offence a felony, and imposed all the ordinary consequences of a felony, *R. v. Johnson*, 3 *M. & S.* 556. But if the act enact that the offence shall be punishable with forfeiture of all a man has, or of his body and goods, it only amounts to a misdemeanor. 1 *Hawk*. c. 7, s. 6.

Any private individual may and ought to arrest a person whom he sees committing treason or felony; and when he knows that such an offence has been committed, he may arrest any one whom he reasonably suspects to be the traitor or felon. Constables may (and whenever they have power, it is also their duty,) arrest on such suspicion, although they may have no positive knowledge of the actual commission of such an offence. *Beckwith v. Philby*, 6 *B. & Cr.* 635; *Davis v. Russell*, 5 *Bing.* 355; *Nicholson v. Hardwick*, 5 *C. & P.* 495.

The arrest of persons charged with treason, felony, or breach of the peace, may be effected in any place, on any day, and at any time of the day, 9 *Co.* 66; *Ch. C. L.* 16; and if they fly from, or resist a lawful arrest by the officers of justice, they may be killed, when they cannot be otherwise secured. *R. v. Dant*, ante 81; *R. v. Fennerty*, ante 82; 1 *East. P. C.* 298. A person may repel force by force in defence of his person, habitation, or property against one who manifestly intends and endeavours by violence or surprise to commit a known felony upon either. In these cases he is not obliged to retreat, but may pursue his adversary till he finds himself out of danger, and if in a conflict between them he happen to kill, such killing is justifiable. *Fost.* 273. In case of an attempted robbery or murder, the servant of the person attacked, or any person present may interpose; and in arson and burglary, any member of the family, or even a lodger, may lawfully kill the assailants to prevent the mischief intended. *Fost.* 274.

Felons may be tried at any assizes or sessions after their committal, and have no right to have their trial postponed, except for the absence of a material witness who could not be produced, or other good cause shewn on affidavit. *R. v. D'Eon*. *Bl.* 514, *Burr.* 1514. Persons arraigned for treason or capital felony have a right of peremptory challenge of twenty of the jury panel when called, and before they are sworn. 9 *Geo.* 4, c. 54, s. 9. In felony alone, the parties concerned are capable of distinction, as principal or accessories. *Ch. C. L.* 261.

## NOTE:

3. *Misdemeanor*.—This is the third and lowest class of offences, and embraces all those of a public nature, which are excluded from the two former. Every offence which is prejudicial to, or tends to the prejudice of, public justice, peace, health, decency, or morals, if not otherwise provided against, is punishable as a misdeameanor, and may be proceeded against either by indictment or criminal information. 2 *Hawk. c. 3, ss. 3, 4, and c. 25, s. 4*; *R. v. Moore, 3 B. & Ad. 184*; *Williams v. E. I. Co. 3 East. 201*; *R. v. Friend, R. & R. 20*; *R. v. Bykerdike, 1 Moo. & Rob. 179*. Disobedience of the letter or manifest intention of a statute which simply enjoins or prohibits certain things immediately concerning the public good, is also a misdemeanor. 2 *Hawk. c. 25, s. 4*; *R. v. Davis, Say. 133, Burr. 803*. An attempt, solicitation, or incitement to commit a felony or misdemeanor, is itself a misdemeanor. *R. v. Vaughan, 4 Burr. 2494*; *R. v. Higgins, 2 East. 5*; *Russ. & Ry. C. C. R. 107, n.*; *R. v. Scholfield, Cald. 397*, unless by positive statute the offence be raised to a felony, as attempts or solicitations to commit murder are by the 10 *Geo. 4, c. 34, ss. 9, 14, ante 84*.

To this head also is to be referred that class of offences called *Misprisions* or contempts, 1 *Hale, 371, 375*. These are either negative, as the concealing treason or felony when committed; or positive, as the maladministration of public offices,—refusing to aid the king when called on, for advice, or in war,—asserting falsely that the king labours under mental derangement,—attempting to alienate the affections of the people by bringing the government into disesteem, or the like. 4 *Bl. Com. 119*; 3 *D. & Ry. 464*.

The common law punishment of all misdemeanors, is fine and imprisonment, or both. *Barl. 370*.

Persons charged with misdemeanor, may insist on being admitted to bail, unless bail be ousted by a special statute. 2 *Hale, 127*. Upon trial they may in the King's Bench have a special jury, and may appear by attorney. *Ch. C. L. 522*.

No person need submit to be tried for any misdemeanor, except those relating to the forging and counterfeiting foreign securities and copper money, under the 43 *Geo. 3, c. 139*, or those which are to be tried under the 5 & 6 *Will. 4, c. 48, ante 169*, unless he has been made amenable twenty days before the first day of the sessions or assizes. 60 *Geo. 3, c. 4, s. 7*.

A misdemeanor is merged by a statute making an offence felony, *Lord Raym. 711*. In misdemeanors there can be no accessories, for all those who in felony would be accessories *before* the fact, are in the same degree as principals; and those who would be accessories *after* the fact, by receiving the offenders, incur no penalties, unless the statute regarding the offence specially extend to receivers and comforters. 4 *Bl. Com. 36*; 1 *Hale 613*.

# BOOK II.

## OF PUNISHMENTS.

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### PART I.

#### OF THE COURTS FOR THE PUNISHMENT OF OFFENDERS.

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#### CHAPTER I.

##### OF THE CONSTITUTION AND AUTHORITY OF CRIMINAL COURTS IN GENERAL.

9 *Hen. III.* (*Magna Charta*) c. 17, *Eng.* No sheriff, constable, escheator, coroner, nor any other our bailiffs shall hold pleas of our crown.

c. 29.—No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed, nor we will not pass upon him nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.

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#### NOTE

A court of justice, in the most general acceptation of the term, is a place where justice is judicially administered. *Cow. Interp.* "Court." And all such courts are classed under two heads, viz. courts of record, and courts not of record. They are also divided into superior courts and inferior courts. A third division, however, may properly be made, with a view to criminal proceedings, viz. into courts of *preliminary inquiry*, and of *determination*, as they may be called. The courts of criminal jurisdiction in this country are, the court of King's Bench, Oyer and Terminer and General Gaol Delivery, Assize and Nisi Prius,

The different kinds of courts.

## NOTE.

Admiralty, Sessions of the Peace, Court of the Coroner, and Court of Petty Sessions; upon the peculiar jurisdiction of each of which, we shall hereafter offer some observations.

Courts of record.

A court of record is one in which the proceedings are conducted according to the course of the common law, and are duly enrolled. *Jacob's L. D. "Court."* Such courts owe their origin to acts of parliament, letters patent, or prescription. *Co. Litt.* 260, *a.* and are all, properly speaking, called the King's Courts, to whomsoever the profits may belong. 1 *Bac. Abr.* 559. The records or parchment rolls of these courts are of such high authority, that no proof will be admitted against them, and they are only triable by themselves. A writ of error lies not on the judgment of a court not of record: the remedy is by writ of false judgment. 2 *Saund.* 101. All courts of record have power to protect from arrest in any civil suit, the persons who have occasion to resort thereto, whether as parties or as witnesses, regularly summoned to give evidence, *cumdo, morando, et redeundo.* 1 *Bac. Abr.* 565. They may also impose reasonable fines, not only on such as shall be convicted before them of any crime on a formal prosecution, but also on those who may be guilty of a contempt in the face of the court, as by giving opprobrious language to the judge, or obstinate refusal to perform their duty as officers of the court; and they may be immediately ordered into custody. 2 *Hawk. c. 1, s. 15.* A court of common law which has power given to it to fine and imprison is thereby made a court of record. 2 *Hawk. c. 1, s. 14*; 12 *Mod.* 388; 1 *Ld. Ray.* 468; 1 *Salk.* 200. A court which is not of record cannot impose a fine, or commit to prison, unless specially authorized by statute, *Beecher's case.* 8 *Co.* 60, *b.* Where there are divers judges of a court of record, the act of any one of them is effectual, if their commission do not expressly require more. 2 *Hawk. c. 1, s. 10.* Such judges are not punishable in any way, for a mere error of judgment, whatever may be its consequences; but for wilful corruption, they are liable to be called to account in parliament. 1 *Bac. Abr.* 555. They must all exercise their office in person, and cannot appoint a deputy, 2 *Hawk. c. 1, s. 9*, unless expressly authorized thereto by act of parliament. It seems that no court in this country has authority to try a foreigner, for an offence committed abroad against a subject of this country, although such foreigner may, at the time of the offence, have been a prisoner of war, actually employed on board an English ship. *R. v. Depardo, R. & Ry.* 134; 1 *Taunt.* 26.

Superior and inferior courts.

The superior courts, which are all courts of record, are those whose authority extends over all Ireland, and are familiarly known as the Four Courts at Dublin. Of these, the King's Bench alone is conversant with criminal matters. Inferior courts are those whose jurisdiction is limited to a particular county or district, and in some instances, to particular persons or matters.

*Lucking v. Denning*, 1 *Salk.* 201. Every thing is supposed to be done within the jurisdiction of a superior court, unless the contrary especially appear; whereas, nothing shall be intended within the jurisdiction of an inferior court, but what is expressly alleged. 1 *Bac. Abr.* 559. And if an inferior court adjudicate upon matters which are beyond its local jurisdiction, the whole proceedings are void, having been taken *coram non judice*; but it is otherwise where its jurisdiction is limited to persons; for there, if the defendant does not plead to it he is estopped. *Lucking v. Denning*, 1 *Salk.* 201. The proceedings of an inferior court of record are removeable only by writ of certiorari before judgment, and by writ of error after judgment. 1 *Bac. Abr.* 559.

NOTE.

The distinction of courts into those of preliminary inquiry, and of determination, has been fully recognized in *The King v. Borron*, 3 *B. & Ald.* 432; *Cox v. Coleridge*, 1 *B. & Cr.* 37; and *Duncan v. Thwaites*, 3 *B. & Cr.* 556. In the former, the rights of parties are not finally adjudicated upon; but such inquiry is instituted, as may facilitate proceedings in the court of determination. Another leading distinction recognized by the above cases is, that advocates have no right to interfere for a party upon a preliminary investigation. The ordinary courts of preliminary inquiry in criminal matters, are the court of the Coroner, the Petty Sessions, and the tribunal of the single magistrate. The courts of determination are the King's Bench, Oyer and Terminer and General Gaol Delivery, Admiralty, Quarter Sessions of the Counties, Courts of the Recorders &c., of Corporations, and, upon summary conviction, the courts of Petty Sessions or the single Magistrate.

Courts of inquiry and determination.

## CHAPTER II.

### OF THE COURT OF KING'S BENCH.

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The King's Courts may be held on the Inns Quay, in Dublin.

35 Geo. 3, c. 25, s. 1. Whereas a new building hath lately been erected, and is now nearly finished, situated on the Inns Quay, in the county of the city of Dublin, wherein it is intended that the King's Courts of Justice, called the Four Courts, shall hereafter be holden; therefore be it &c., that on the first day of the next law term, after the said new building shall be finished, so as to be fit for holding the said King's Courts therein, the place for holding the same shall be, and from thenceforth shall continue to be the King's Courts of Justice, and it shall and may be lawful to hold the King's Courts of Justice, called the Four Courts, Dublin, and each and every of them therein, as fully and in like manner, and with all jurisdictions, powers, privileges, and authorities, and with all matters and things incident and relative thereto, and dependant thereon, in like manner, to all intents and purposes, as the King's Courts of Justice, and each of them now are, or heretofore have been holden, at their present site at Dublin aforesaid.

The King's Courts shall be both in the county and city of Dublin.

2. That the said new building so intended for holding therein the said Four Courts, and the whole site and area thereof, shall, from and after the time when the same shall be finished, so as to be fit for holding the said courts therein, for ever thereafter be, and taken and deemed to be, and are hereby declared and enacted to be situate, lying, and being, both in the county of the city of Dublin, and county of Dublin, to and for all intents and purposes whatsoever.

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#### NOTE.

The court of King's Bench is the highest court of ordinary justice in criminal cases within the realm, and exercises whatever authority was lawfully exercised in the star chamber. 10 *Mod.* 187; *Holt* 361. Its judges are the sovereign justices of Gaol Delivery, and of Oyer and Terminer, 9 *Co.* 118; and therefore, when proceedings are limited to justices of Oyer and Terminer, the court of King's Bench has an implied jurisdiction. 2 *Hale*, 4. They are also by virtue of their office, justices and conservators of the peace in every county of

Ireland, and the supreme coroners of the realm, *16th Report of Com. of Inq.* 1; and can singly perform the duties of such respective offices. *4 Inst.* 73. Their warrants, therefore, are not tested as of any particular county, but of Ireland generally; and are directed to all constables, and not to those of a particular district.

NOTE.

The jurisdiction of the court is two-fold; original, and secondary. It has original jurisdiction by indictment over all crimes whatsoever, which are committed, either wholly or in part, within the county, or county of the city of Dublin, *App. to 16th Report of Com. of Inq.* 46; and by information, over all misdemeanors committed in any county of Ireland. *1 Ch. C. L.* 156; *R. v. Munton*, *1 Esp. R.* 63. In the exercise of its secondary jurisdiction, it takes cognizance of all crimes whatsoever, which have been proceeded against by indictment in inferior courts, when the proceedings have been removed into this court by *certiorari* before judgment, or by writ of error afterwards. *4 Bl. Com.* 320, 391. At the commencement of each term, it is usual in this court to swear in grand juries of the county and city of Dublin, before whom may be sent all bills of indictment for offences committed in those places. All informations filed in this court, whether in the crown office, or by the attorney general, *ex officio*, and all indictments for offences originally cognizable here or removed by *certiorari*, if not tried at the bar of the court, which rarely happens, must be tried by writ of *nisi prius*, *4 Bl. Com. by Chitty*, 205, n. 8. In prosecutions here, it is not necessary to produce a precedent of a similar offence formerly punished, but it is, in all cases, sufficient for the assertion of its jurisdiction, that the offence be against the first principles of justice, and of dangerous consequence to the public. *2 Hawk. c. 3, s. 4*. A statute therefore, which enacts that a common law offence, or one created by a previous statute, shall be triable by certain tribunals, does not thereby oust this court of its right to interfere; but where an offence is created by statute, and, by the same statute, a particular tribunal is appointed to take cognizance of it, it is questionable whether the King's Bench can interfere. *2 Hawk. c. 3, s. 6*, but see *1 Sid.* 350. This court is invested with a general jurisdiction over all inferior courts, *10 Mod.* 349, which is not restrained by statute, unless there be express negative words. *2 Mod.* 129. Its jurisdiction extends also, over all inferior magistrates, whom it may compel to do their duty. *10 Mod.* 48. All misdemeanors of judicial officers, not attributable to a mere error of judgment, are punishable here as contempts, *Anon.* *1 Salk.* 201; and any court which exceeds its jurisdiction may be restrained by prohibition, issuing from the King's Bench. *Vaugh.* 157; *3 Bulstr.* 119. Every plea to the jurisdiction of this court ought to give some other court by which the matter may be tried; and it is not sufficient to plead merely that the cause of action arose out of its jurisdiction. *R. v. Johnson*, *6 East.* 583.

Original and secondary jurisdiction.



**NOTE**  
Power to  
bail.

This court, in term time, or any of its judges, in vacation, may bail for any offence whatsoever, even treason, although they cannot try the party bailed, *Skin.* 163, except only where the party has been committed by one of the houses of parliament, or in execution, or for a contempt by another of the superior courts of law. 2 *Hawk. c.* 15, s. 47; 4 *Bl. Com.* 299; 1 *Mod.* 164. The discretion of the court or judges in this respect, although uncontrolled by positive enactment, is usually regulated however, by a consideration of the circumstances, as the enormity of the offence charged, the suspicion attaching to the prisoner, &c. And this bailment, in the King's Bench, may be upon an original indictment before them in the county where they sit, or upon an indictment removed by *certiorari*, or upon a prisoner being removed by *habeas corpus*, before or after an indictment taken, 2 *Hale*, 129; for all persons that are bailed by this court are *de facto*, or in supposition of law, supposed to be previously in the custody of the Marshall of the Four Courts. 2 *Hale*, 127. But it does not appear to be always insisted on, that the prisoner should be brought up on a *habeas corpus*. *Batty*, 138, n. An informality in the warrant of commitment affords no ground for the interposition of the court, if it can be collected from the depositions, that a serious offence has been committed, and that there is a reasonable ground of charge against the prisoner. *R. v. Marks*, 3 *East.* 167. And where he has been committed by justices of the peace, the court will not entertain a motion to admit him to bail, unless an application have been previously made to the committing magistrates. *R. v. Rowe*, *Batty*, 138. In case of their refusal, an order will be made upon them, that copies of the informations shall be returned, that the court may the better judge of the circumstances. *R. v. Stewart*, *Batty*, 138. The court will in no case admit to bail upon any defect or informality appearing in the committal, but, upon a perusal of that document, if doubts arise, will order a copy of the informations to be returned as above, and afterwards decide the case upon its merits. If the prisoner upon this last application should rely on any other matters than what are disclosed by the informations, he must give notice of his motion to the prosecutor and attorney general. *Batty*, 139, n. Should the committal appear to be regular, and should the affidavit to ground the motion, merely deny the presence of the prisoner at the alleged offence, without laying any other ground to induce a belief that the informations are insufficient, the court will not even order them to be returned. *R. v. Browne*, 1 *Hud. & Bro.* 13. *R. v. Greenwood*, 2 *Str.* 1138.

Power of  
punishing.

For the better repressing of crime, this court has a discretionary power of inflicting exemplary punishment on persons convicted before them of misdemeanors, either by fine or imprisonment, or both, as the nature of the crime, considered in all its circumstances, shall require; and it may make use of

any prison which shall seem most proper. 2 *Hawk. c. 3, s. 5.* It is said that no other court can remove or bail persons condemned to imprisonment by this court. 1 *Bac. Abr. 592.* Every act which is done by a judge of this court, in such his capacity, is judicial ; and, inasmuch as no judge of a court of record is answerable for the correctness of his judicial acts, it follows that an action cannot be maintained against a judge of the King's Bench, for the illegal issuing of a warrant to arrest, and consequent apprehension. *Taaffe v. Downes, C. P. Ir. H. T. 1813.*

NOTE.

## CHAPTER III.

### OF THE COURT OF OYER AND TERMINER AND GENERAL GAOL DELIVERY.

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Oyer and  
terminer,  
to whom  
granted.

13 *Edw. 1, stat. 1, c. 29, Eng. (pars.)* A writ of trespass (*ad audiendum & terminandum*) from henceforth shall not be granted before any justices, except justices of either bench, and justices in eyre, unless it be for an heinous trespass, where it is necessary to provide speedy remedy, and our lord the king of his special grace, hath thought it good to be granted.

Justices of  
assize shall  
also be jus-  
tices of gaol  
delivery.

27 *Edw. 1, c. 3, Eng. (pars.)* (3) We, for the utility of our realm, and for the more assured conservation of our peace, have provided and ordained, that justices assigned to take assizes in every county where they do take assizes, as they be appointed, incontinent after the assizes taken in the shires, shall remain both together, if they be lay; and if one of them be a clerk, then, one of the most discreet knights of the shire being associate to him that is a layman, by our writ shall deliver the gaols of the shires, as well within liberties as without, of all manner of prisoners, after the form of the gaol deliveries of those shires before time used.

Justices of  
assize and  
gaol delivery  
shall be  
assigned, who  
shall estreat  
fines, felons'  
goods, &c.

3 *Edw. 2, c. 5.*—It is ordained and provided, that there shall be certain justices assigned to take the assizes of mortdauncestor, and of novel disseisin, in all the counties of Ireland, and to deliver the gaols in the same counties, and that they shall make estreats of the fines and amerciaments, chattels of felons, and other manner of profits, which appertain to the king, throughout their offices, and such estreats shall deliver into the exchequer twice every year, that is to say, at Easter term and Michaelmas term.

The autho-  
rity of justices  
of assize and  
gaol delivery.

4 *Edw. 3, c. 2, Eng.*—Item, it is ordained, that good and discreet persons, other than of the places, if they may be found sufficient, shall be assigned in all the shires of England, to take assizes, juries, and certifications, and to deliver the gaols. (2) And that the said justices shall take the assizes, juries, and certifications, and deliver the gaols, at the least three times a year, and more often, if need be. (3) Also there shall be assigned good and lawful men in every county to keep the peace. (4) And at the time of the assignments, mention shall be made, that such as

4 E. 3, c. 2.



shall be indicted or taken by the said keepers of the peate, shall not be let to mainprise by the sheriffs, nor by none other ministers, if they be not mainpernable by the law. (5) Nor that such as shall be indicted, shall not be delivered, but at the common law. (6) And the justices assigned to deliver the gaols, shall have power to deliver the same gaols of those that shall be indicted before the keepers of the peace. (7) And that the said keepers shall send their indictments before the justices, and they shall have power to inquire of sheriffs, gaolers, and others, in whose ward such indicted persons shall be, if they make deliverance, or let to mainprise any so indicted, which be not mainpernable, and to punish the said sheriffs, gaolers, and others, if they do any thing against this act.

28 *Hen. 6, sess. 2, c. 2.*—It is ordained and agreed, that no commission shall be made henceforth out of our sovereign lord the king's chancery of Ireland, to any to inquire, hear, and determine, or to inquire, hear, and certifie, in the counties of Dublin, Kildare, Meith, and Uriell, of treasons, felonies, or goods of felons, and men outlawed, trespasses, contempts, and all other excesses and offences; but that the chancellor or treasurer, or justices of the one bench or of the other, or barons of the exchequer, the king's serjeant or attorney, or one of them, shall be with such commissioners put into the commission, and in the quorum, and present at time of such inquisitions taken: saving the commissions made or to be made to justices or keepers of the peace after the old custom. And if any such commission be made to the contrary, that it shall be void and holden for none, and all the things contained within the inquisitions so taken by authority of the said parliament.

Who must be included in the commissions of oyer and terminer in certain counties.

10 *Car. 1, sess. 2, c. 14, s. 4.*—That albeit any person or persons, being justice of assize, justice of gaole delivery, justice of peace, within this realm, or being in any other of the king's commissions whatsoever, shall fortune to be made or created duke, archbishop, marquisse, earle, viscount, bishop, baron, justice of the one bench or of the other, baron of the exchequer, knight, serjeant at law, or sheriffe; yet that notwithstanding, he and they shall remaine justice and commissioner, and have full power and authority to execute the same, in like manner and forme as he or they might or ought to have done before the same.

Justice of assize or gaol delivery may proceed to execute his commission, notwithstanding his promotion as herein.

8 *Geo. 1, c. 6, s. 1.*—Whereas a doubt has been made whether writs of nisi prius or assize, can be executed before the puisne barons of his majesty's court of Exchequer, not being sworn serjeants; for the speedier dispatch of justice, be it declared and enacted by &c., that writs of assize and nisi prius shall and may be executed before the said barons of his majesty's court of Exchequer, or any or either of them, or before his majesty's prime serjeant at law, attorney-general, solicitor-general, or any or either of them, or any other of his majesty's council learned in the law; and that they, or any or either of

Commission of assize, nisi prius, and gaol delivery may be executed by puisne baron of the Exchequer, or by king's counsel.

8 G. 1. c. 6.

them, may be commissioner or commissioners of oyer and terminer and gaol delivery, and shall have such and the same power as the justices of the one bench or the other have, in the execution of such writs or commissions in every or any county of this kingdom, when so appointed; any law or statute to the contrary notwithstanding.

3 Geo. 2, c. 15 (a), s. 1.—[*Recites the necessity of more frequent gaol deliveries in the county and city of Dublin; and enacts that for the purpose of holding commissions of oyer and terminer and general gaol delivery for such county and city, the place where the king's bench then sat should be deemed for all the purposes of such commissions, to be both in the county and city of Dublin.*]

2. [*Requires all officers of justice and others when summoned, to give their attendance there as if the commissions were respectively executed at some place within the county of the city of Dublin, or county of Dublin respectively.*]

Newgate shall be the gaol of both counties.

3. That the gaol of Newgate in the county of the city of Dublin shall from henceforth be deemed and taken to be a gaol for the county of Dublin, as well as for the county of the city of Dublin, to answer the purposes aforesaid, in such manner as is now practised by his majesty's court of king's bench; and that upon all rules, orders, or warrants of execution of any of the criminals convicted and condemned to die for any crime committed in the county of Dublin before such commissioners, the said commissioners shall and may, and are hereby empowered and authorized by any rule, warrant, or order, by them conceived, to order and direct the sheriffs of the county of the city of Dublin to be aiding and assisting to the sheriff of the county of Dublin in the execution of such criminals at the common place of execution, lying in the liberties of the city of Dublin, in like manner as is now used and practised by the court of king's bench; any law to the contrary notwithstanding.

Commissioners shall execute all powers as before this act.

4. That the said commissioners for the said counties respectively, shall and may have and execute all and singular the powers, authorities, and jurisdictions, as commissioners of oyer and terminer or gaol delivery have, or might execute, within their respective counties before the making of this act; and that all proceedings before them shall be as good and valid in law, to all intents and purposes, as if such commissions were executed in the county of the city of Dublin, or county of Dublin respectively, any law or usage to the contrary notwithstanding (b).

35 Geo. 3, c. 25, s. 3. And whereas a new session-house is now erecting near the new gaol at Green-street, in the county

(a) Entitled "*An act for the more speedy tryal of criminals in the county of the city of Dublin, and county of Dublin.*"

(b) Before this statute, the duty of discharging the gaols of the county and city of Dublin was actually performed by the court of King's Bench. *App. to 16th Rep. of Com. of Inq.* 41.

of the city of Dublin, which is deemed to be a fit and convenient place for holding the quarter sessions of the peace for the county of the city of Dublin, and the several adjournments thereof, and also to be a fit and convenient place for holding and executing all commissions of oyer and terminer and gaol delivery, for the county of the city of Dublin, and also for the county of Dublin; be it &c., that as soon as the said new session house shall be finished, so as to be fit for holding the said courts of sessions of the peace, or of oyer and terminer, or of gaol delivery therein, that the said new session house, and the whole site and areas thereof, shall for ever thereafter be, and be taken and deemed to be, and are hereby declared and enacted to be situate, lying, and being, both in the county of the city of Dublin, and county of Dublin, to and for all intents and purposes whatsoever.

35 G. 3, c. 25.

The session-house in Green-street, Dublin, shall be both in the county and city of Dublin.

38 Geo. 3, c. 26, s. 1. [*Recites the inconvenience resulting from a suspension of the commissions of oyer and terminer and gaol delivery, by reason of the sitting of the King's Bench in the county for which they may be awarded.*] That from and after the thirty-first day of March, (1798), when any session of oyer and terminer, and general gaol delivery for the said county of Dublin, and county of the city of Dublin, or either of them, commenced in the vacation between any two terms, the same session may be continued to be holden, and the business thereof finally concluded, although such session should be protracted and continued until the essoign day of the term next ensuing the commencement of the same, and the sitting of the court of King's Bench in consequence thereof, in either of the said counties; and all proceedings, judgments, and all acts done in consequence of such proceedings and judgments, made or done at such session so continued after the essoign day of any term, shall be good and valid in law, any law or usage to the contrary notwithstanding.

Sessions of oyer and terminer in county and city of Dublin, shall not be suspended by the commencement of term.

38 Geo. 3, c. 38, s. 1. Whereas, it is necessary for the speedy administration of justice, that commissioners of oyer and terminer, and general or special gaol delivery, may commence their sessions in the county of Dublin, and county of the city of Dublin, during term time; be it therefore &c., that it shall and may be lawful for commissioners of oyer and terminer, and general or special gaol delivery, in and for the county of Dublin, and the county of the city of Dublin respectively, to commence, hold, and continue their sessions during the time of term, and notwithstanding the court of King's Bench may be sitting in the said counties respectively, any law or usage to the contrary notwithstanding.

Commissioners of oyer and terminer may begin to sit in Dublin during term.

2. That all precepts issued, or to be issued for holding such sessions, or any of them, during term, shall be good and valid to all intents.

Precepts for such sessions shall be valid.

5 & 6 W. 4,  
c. 26.

Lord lieutenant may direct where assizes and special commissions in each county shall be held.

5 & 6 Will. 4, c. 26 (a), s. 1. [*Recites 6 Rich. 2, c. 5, Eng.; and 11 Rich. 2, c. 11, Eng., and repeals both acts.*]

2. And be it declared and enacted, that the lord lieutenant, or other chief governor or governors of Ireland, by and with the advice of the privy council of Ireland, shall have power from time to time to order and direct at what place or places in any county in Ireland the assizes and sessions under the commissions of gaol delivery, and other commissions for the despatch of civil and criminal business, shall be holden, and to order and direct such assizes and sessions for the despatch of criminal and civil business to be holden at more than one place in the same county, and to order and direct the assizes and sessions under such commissions for the despatch of criminal or civil business, to be holden at one or more place or places in such county; and further to order and direct any special commissions of oyer and terminer and gaol delivery, to be holden at any one or more places in any such county.

Assize towns not to be changed, or counties divided, save on memorial of grand jury.

3. Provided always, and be it enacted, that it shall not be lawful for the lord lieutenant or other chief governor or governors of Ireland, and the privy council there, to make any order for changing the place for holding the assizes in any county, or for dividing any county, for the purposes of this act, unless a memorial shall have been presented to him or them by a majority of the grand jury of the assizes of such county, praying that such change or division may be made.

Lord lieutenant may divide counties, and make orders for holding of assizes in each division.

4. That in case the lord lieutenant or other chief governor or governors of Ireland, by and with the advice of the privy council of Ireland, shall think fit to order and direct that the assizes or any such special commissions shall be holden at more than one place in any one county, it shall be lawful for the lord lieutenant or other chief governor or governors, by and with the advice aforesaid, to divide any such county for the purposes of this act, and to make rules and regulations touching the venue in all cases, civil and criminal, then pending or thereafter to be pending, and to be tried within any division of such county so to be made as aforesaid; and touching the liability and attendance of jurors, whether grand jurors, special jurors, or common jurors, at the assizes and sessions as aforesaid, or at any sessions under any special commissions to be holden within any such division; and touching the use of any house of correction or prison as a common gaol, and the government and keeping thereof; and touching the alteration of any commissions, writs, precepts, or other proceedings whatsoever, for carrying into effect the purposes of this act; and touching any other matters that may be requisite for carrying into effect the purposes of this act; and all such rules and regulations shall be of the like force and effect as if the same had been made by the authority

(a) Entitled "*An act for the appointment of convenient places for the holding of assizes in Ireland.*"

of parliament, and shall be notified in the Dublin Gazette, or in such other manner as the lord lieutenant, or other chief governor or governors of Ireland, by and with the advice of the privy council of Ireland, shall think fit to direct.

6 & 7 W. 4,  
c. 26.

6 & 7 Will. 4, c. 116 (a), s. 176. [*The lord lieutenant and council may direct that any county of Ireland shall be divided into two ridings, and that assizes shall be held at such town within the same as shall be deemed expedient, in addition to the usual assize town.*]

177. [*The lord lieutenant and council may make all regulations respecting the venue in civil and criminal cases, the attendance of jurors, the building of court houses, and every thing necessary for the holding the assizes, which orders shall be notified in the Dublin Gazette; provided that the jurisdiction of sheriffs and justices of the peace, and the places of holding elections for members of parliament, shall be in no wise altered hereby.*]

WILLIAM the Fourth, by &c., to our right trusty &c., [*Naming the judges according to seniority, the attorney and solicitor-general, serjeants, &c.*] greeting. Know ye, that we have appointed you, jointly and severally, during our pleasure, our justice and justices of all assizes, juries, recognitions, and certificates, that before any of our justices, by any of our different writs might be held or taken within our several counties of &c. [*Naming the several counties, and counties of cities or towns for which assizes are to be held within the circuit.*] or any of them. And further we command you, that on certain days or places, by you or any one or more of you to be appointed, you or any one or more of you hold the assizes, juries, recognitions, and certificates aforesaid, and do therein as to justice shall appertain, according to the laws, and usages, and statutes of Ireland. We also command the high sheriffs of the several counties and towns, and counties of the towns aforesaid, and every of them, that on certain days and places, by you or any one or more of you to be made known unto them, they cause to come before you or any one or more of you, the aforesaid assizes, juries, recognitions, and certificates with our original writs, and all other things touching the same. And further, we have appointed you, jointly and severally, during our pleasure, our commissioner or commissioners in the several counties and towns, and counties of the towns aforesaid and every of them, as well within liberties as without, for all and singular actions, suits, plaints, as well real

FORM of  
commission  
to the judges.

Of Assize.

Of Nisi prius.



**FORM.** as personal, debts, accounts, trespasses, covenants, bargains, contracts, and demands whatsoever, of all persons willing to complain, as well by bill without our writ, as by our writs ; and to hear, examine, discuss, and determine thereon, and to do full and speedy justice to all parties therein, according to the laws and customs of Ireland ; and also to do all other things in the premises and in the execution thereof, which may be requisite and necessary. And moreover, we have constituted and appointed you, jointly and severally, during our pleasure, our justice and justices, commissioner and commissioners, in the several counties and towns, and counties of the towns aforesaid, and every of them, to hear, examine, discuss, and determine, of all and singular treasons, murders, manslaughter, burnings, unlawful assemblies, felonies, robberies, extortions, oppressions, transgressions, crimes, contempts, offences, evil doings, and causes whatsoever, by whomsoever done, committed, or perpetrated, or hereafter to be done, committed, or perpetrated within the several counties and towns, and counties of the towns aforesaid, or any of them, as well against our peace and our common law, or of any of our predecessors, of that part of our said united kingdom called Ireland, as against the form and effect of any statutes, acts, ordinances, or provisions heretofore made, published, ordained or confirmed : and from time to time, as often as need shall be, to deliver our gaols of the several counties and towns, and counties of the towns aforesaid, and every of them, of all prisoners and malefactors therein ; saving to us all amerciements thence arising and accruing. We, therefore command you, that you or any one or more of you, do diligently attend about all and singular the premises ; and that you, or any one or more of you, do and execute these things with effect. We also command all and singular mayors, sheriffs, bailiffs, constables, and all other officers and ministers, and all other our faithful liegemen and subjects of the several counties and towns, and counties of the towns aforesaid, and every of them, that to you, or any one or more of you, in the execution of the premises, they be obedient, aiding, and assisting as becometh. In witness whereof we have caused these our letters to be made patent. Witness, C. H. Earl of M. our lieutenant general and general governor of Ireland, at Dublin, this       day of       in the       year of our reign.

**Of Oyer and Terminer.**

**Of Gaol delivery.**

GRANARD.

**NOTE.** The principal courts of this kind in Ireland are those held at Green street in the city of Dublin, for the trial of prisoners in the gaols of Newgate and Kilmainham, and the crown courts on circuit. The former are held six times in each year, viz. once in each of the vacations after Michaelmas and Easter terms, and twice in each of the other two vacations. The crown court, at the assizes, is held twice a year in every county

of Ireland, in Hilary and Trinity vacations, before one of the going judges of assize. The whole of Ireland, except the county and city of Dublin, being divided into six circuits, the judges meet in the course of each issuable term, and according to seniority, select their circuits, the chief justices and chief baron having the first choice. Two judges being thus allotted to each circuit, the senior judge presides in the crown court at the first town on circuit, while his colleague sits in the civil court, after which they preside alternately in each.

NOTE.

This power of the judges, which is altogether derived from their commission, will of course cease when the commission ceases to be operative ; and this will happen, if the commission be actually suspended by a writ of *supersedeas*, which may be issued on proof that the commission has been unduly granted. But then the power of the justices may be restored by a *procedendo*, without any new commission. 2 *Hawk. c. 5, s. 3.* Or the commission may be determined ;—1st, by the duties being actually discharged ; 2ndly, by an absolute repeal or countermand ; 3rdly, by the demise of the crown, after which event a commission granted during pleasure cannot last longer than six months, 7 & 8 *Will. 3, c. 27, s. 21, Eng.* ; 21 & 22 *Geo. 3, c. 48, s. 3.* 4thly, by granting to other persons a new commission of the same nature with the former. 2 *Hawk. c. 5, s. 8.* But the old commissioners must have notice of the new commission. *Id. ibid.* A commission appointed *pro hac vice* only, will be determined by holding a session without adjournment ; but a commission granted for a certain time, or *quamdiu nobis placuerit*, does not necessarily require adjournment ; and if the court holden under it be broken up without any valid adjournment, it may be holden again on a new summons, 2 *Hawk. c. 5, s. 7.* If a commission of Oyer and Terminer be awarded to certain persons to inquire at a certain place, they cannot open their commission at another place, nor adjourn it thither, nor give judgment there ; and if they do, all the proceedings are *coram non judice*. 2 *Hawk. c. 5, s. 14.* All acts done by commissioners in that capacity ought to be during their sitting. *Mountcan v. Wilson, Str. 568.* Justices of Oyer and Terminer and Gaol delivery may try offences of any degree whatsoever, even high treason ; and, in their latter capacity, may proceed upon indictments found before other justices, and deliver the gaol of all prisoners acquitted, or against whom, upon proclamation made, no evidence shall appear to indict them ; and may order the execution or reprieve of persons condemned before them. 2 *Hawk. c. 6, ss. 2, 6, 8.* But it is not imperative on a justice of gaol delivery, to discharge all the prisoners in a gaol, who are not indicted. He may continue on their commitments, those against whom witnesses do not appear, having been bound over to the sessions. *Russ. & Ry. 173.* The going judges of Assize and Gaol delivery, after

Of the powers of the commissioners.

## NOTE.

their commission is sealed, and after the several circuits have been struck, issue their precept to the several sheriffs of the counties in which the court is to be held, requiring them to summon jurors, proclaim the assizes, and give notice to all justices, coroners, constables, and other officers to be present thereat; which precept is made returnable at the place for holding the assizes, and at a period of not less than fifteen days. *2 Hale, 32; 16th Rep. of Com. of Inq. 123, 136.* But even without the solemnity of this summons, justices of Gaol delivery may command the sheriff, *ore tenus*, to return a panel without any precept in writing to him, (as is necessary in cases of justices of Oyer and Terminer,) because there is a general command to the sheriff by the summons of the gaol delivery, to return twenty-four to try prisoners. *2 Hale, 34.* Justices sitting under several commissions, as of Oyer and Terminer, Gaol delivery, and of the Peace, may make up their record by any or all of them; and if good under any of them, it is sufficient, for the best shall be taken for the king. *2 Hale, 34.* A court of General Gaol delivery may prohibit the publication of proceedings, pending a trial, and can enforce obedience to its order, by imprisonment or fine. *R. v. Clement, 4 B. & Ald. 218; In re Clement, 11 Pr. 68.*

## Special commissions.

Besides the ordinary commissions of Oyer and Terminer, and General Gaol delivery, which we have noticed; special commissions are issued as often as the exigency of the times may require it, for the trial and punishment of certain offenders therein mentioned. The course of proceeding under these commissions, is nearly the same as under the others. *4 Bl. Com. 270.*

## CHAPTER IV.

### OF THE COURT OF ASSIZE AND NISI PRIUS.

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20 *Rich.* 2, c. 3, *Eng.*—Item, the king doth will and forbid, that no lord, nor other of the country, little nor great, shall sit upon the bench with the justices to take assizes, in their sessions in the counties of England, upon great forfeiture to the king; and hath charged his said justices, that they shall not suffer the contrary to be done. No person shall sit upon the bench with the judges of assize.

14 *Hen.* 6, c. 1, *Eng.*—First, our said lord the king hath ordained by authority of the said parliament, that the justices, before whom inquisitions, inquests, and juries, from henceforth shall be taken by the king's writ, called Nisi prius, according to the form of the statute thereof made, shall have power of all the cases of felony and of treason, to give their judgments as well where a man is acquit of felony or of treason, as where he is thereof attainted, at the day and place where the said inquisitions, inquests, and juries be so taken, and then from thenceforth to award execution to be made by force of the same judgments. Judges at nisi prius may give judgment in cases of treason or felony.

59 *Geo.* 3, c. 46.—Whereas appeals of murder, treason, felony, and other offences, and the manner of proceeding therein, have been found to be oppressive; and the trial by battel in any suit, is a mode of trial unfit to be used; and it is expedient that the same should be wholly abolished: be it therefore &c., that from and after the passing of this act, all appeals of treason, murder, felony, or other offences, shall cease, determine, and become void; and that it shall not be lawful for any person or persons, at any time after the passing of this act, to commence, take, or sue appeal of treason, murder, felony, or other offence, against any other person or persons whomsoever, but that all such appeals shall from henceforth be utterly abolished; any law statute or usage to the contrary in anywise notwithstanding. Appeals of murder and other offences abolished.

1 & 2 *Will.* 4, c. 31(a), s. 4.—That upon all trials for felonies or misdemeanors upon any record of the court of King's Judges of assize may pronounce

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(a) Entitled "*An act to improve the administration of justice in Ireland.*"

2 W. 4, Bench, judgment may be pronounced during the sittings or  
 . 31. assizes by the judge before whom the verdict shall be taken, as  
 ~ well upon any person who shall have suffered judgment by  
 sent on default or confession upon the same record, as upon any person  
 ses of who shall be tried and convicted, whether any such person  
 y or respectively be present or not in court, excepting only where the  
 meanor prosecution shall be by information filed by leave of the court  
 before of King's Bench, or such cases of information filed by his  
 upon majesty's attorney general wherein the attorney general shall  
 d. pray that the judgment may be postponed; and the judgment  
 so pronounced shall be indorsed upon the record of *Nisi prius*,  
 and afterwards entered upon the record in court, and shall be  
 of the same force and effect as a judgment of the court, unless  
 the court shall, within six days after the commencement of the  
 ensuing term, grant a rule to shew cause why a new trial should  
 not be had, or the judgment amended(*a*); and it shall be law-  
 ful for the judge before whom the trial shall be had, either to  
 issue an immediate order or warrant for committing the defen-  
 dant in execution, or to respite the execution of the judgment  
 upon such terms as he shall think fit, until the sixth day of the  
 ensuing term; and, in case imprisonment shall be part of the  
 sentence, to order the period of imprisonment to commence on  
 the day on which the party shall be actually taken to and con-  
 fined in prison.

NOTE. Justices of Assize and *Nisi prius*, when sitting in that capa-  
 city, possess no original jurisdiction whatever in hearing and  
 determining indictments of felony. 2 *Hale*, 40. Their juris-  
 diction in criminal matters seems to be confined to cases of  
 criminal information and of indictments, either originating in,  
 or removed to the court of King's Bench, from which the  
 records are sent down to the county in which the indictment  
 was found, to be tried there at *nisi prius*. 2 *Hale*, 39. The  
 record is, in form, pretty nearly the same as in a civil action,  
 the plaintiff being "*W. B.*, coroner and attorney of our lord  
 the king."

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(*a*) A defendant thus sentenced cannot apply to the King's Bench to  
 amend the judgment by diminishing the punishment, upon ordinary affidavits  
 in mitigation, without shewing some specific defect in the sentence, or  
 some matter which could not have been adduced at the assizes. *R. v. Lloyd*,  
 4 *B. & Adcl.* 135.

## CHAPTER V.

### OF THE COURT OF ADMIRALTY.

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13 *Rich. 2, c. 5, Eng.*—Item, Forasmuch as a great and common clamour and complaint hath been oftentimes made before this time, and yet is, for that the admirals and their deputies hold their sessions within divers places of this realm, as well within franchise as without, accroaching to them greater authority than belongeth to their office, in prejudice of our lord the king, and the common law of the realm, and in diminishing of divers franchises, and in destruction and impoverishing of the common people ; (2) it is accorded and assented, that the admirals and their deputies, shall not meddle from henceforth of any thing done within the realm, but only of a thing done upon the sea, as it hath been used in the time of the noble prince king Edward, grandfather of our lord the king that now is.

The court of admiralty shall take cognizance only of offences committed on the sea.

15 *Rich. 2, c. 3, Eng.*—Item, At the great and grievous complaint of all the commons made to our lord the king in this present parliament, for that the admirals and their deputies do incroach to them divers jurisdictions, franchises, and many other profits pertaining to our lord the king, and to other lords, cities and boroughs, other than they were wont or ought to have of right, to the great oppression and impoverishment of all the commons of the land, and hindrance and loss of the king's profits, and of many other lords, cities, and boroughs through the realm ; (2) it is declared, ordained, and established, that of all manner of contracts, pleas, and quarrels, and all other things rising within the bodies of the counties, as well by land as by water, and also of wreck of the sea, the admiral's court shall have no manner of cognizance, power, nor jurisdiction ; but all such manner of contracts, pleas, and quarrels, and all other things rising within the bodies of counties, as well by land as by water, as afore, and also wreck of the sea, shall be tried, determined, discussed and remedied by the laws of the land, and not before nor by the admiral, nor his lieutenant, in any wise. (3) Nevertheless, of the death of a man, and of a maihem done in great ships, being and hovering in the main stream of great rivers, only beneath the bridges (a) of the same

The court of admiralty shall have no jurisdiction of contracts, &c. arising on land.

The admiralty may inquire of death or

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(a) The words in the original are "*paraval les pountz*," which, it is said, have been *mistranslated as above*, but ought to have been interpreted

15 R. 2. c. 3.

mailem  
committed  
in ships while  
lying in  
rivers below  
the bridges,  
or during  
their voyage.

rivers, nigh to the sea, and in none other places of the same rivers, the admiral shall have cognizance, and also to arrest ships in the great flotes, for the great voyages of the king and of the realm; saving always to the king all manner of forfeitures and profits thereof coming; (4) and he shall have also jurisdiction upon the said flotes, during the said voyages only, saving always to the lords, cities, and boroughs, their liberties and franchises.

The king  
shall appoint  
a judge of  
the admiral-  
ty.

23 & 24 Geo. 3, c. 14 (a), s. 1.—Whereas it is expedient to regulate the high court of admiralty in this kingdom, and the mode of appealing therefrom: be it &c., that his majesty, his heirs and successors, shall and may from time to time nominate, constitute, and appoint, under the great seal of this kingdom, one fit and discreet person to be judge of the high court of admiralty in this kingdom, to have and hold the said office, so long as he shall behave himself well therein, and that the person so to be nominated, constituted, and appointed, shall have full power and authority to hear and determine all and all manner of civil, maritime, and other causes to the jurisdiction of the said court belonging, or which of right belong thereto, according to the laws and statutes of this realm.

Commis-  
sions under  
the 11, 12 and  
13 Jac. 1, c. 2,  
shall be issued  
to the admiral-  
ty judge,  
and others  
appointed by  
the lord chan-  
cellor.

. 4. [*Recites the 11, 12, 13, Jac. 1, c. 2, s. 1, ante 18.*] Be it therefore &c., that all commissions to be issued in virtue of the said recited act, shall and may be directed to the judge of the high court of admiralty of this kingdom, so to be appointed as aforesaid, and to three or four such other discreet persons as shall be nominated and appointed by the lord chancellor of Ireland, or keeper or keepers of the great seal for the time being, pursuant to said act; and that such commissioners, or any two of them, and none other, shall and may hear and determine all and every the offence and offences named in the said act, and for that purpose shall and may have, use, and exercise all and every the powers and authorities which any justices of oyer and terminer, or gaol delivery, may have, use, and exercise, for and in respect of the aforesaid offences, when done and committed upon the land, within this realm.

Admiralty  
offences,  
punishable  
as if com-  
mitted on  
land.

9 Geo. 4, c. 54, s. 22. That all offences prosecuted in the high court of admiralty of Ireland shall, upon every first and subsequent conviction, be subject to the same punishment, whether of death or otherwise, as if such offences had been committed upon the land (b).

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"beneath the points," i. e. to the land's-end, *Leigh v. Burley*. *Om.* 122; 4 *Inst.* 135; for where a man can see from one side of the water to the other, it is *infra corpus comitatus*, and the admiral should have no jurisdiction. *Com. Dig. Admiralty. E. 14.*

(a) Entitled "*An act for regulating the High Court of Admiralty in this Kingdom.*"

(b) See also the statutes, 9 Geo. 4, c. 55, s. 74, and c. 56, s. 55, (*ante* 14.) and 10 Geo. 4, c. 34, s. 41, (*ante* 93.)

The court of admiralty has an *exclusive* jurisdiction as to all offences committed upon the high seas, and without the body of any county, 4 *Inst.* 134; 2 *Hale* 18. It has an *alternate* jurisdiction with the common law, as to offences committed on the open shore, between high and low water mark, 3 *Inst.* 113; 2 *Hale*, 17, 20. And the jurisdictions are *concurrent*, when a death or mayhem has taken place in a great ship hovering in a great river, and below the first bridge, although within the body of a county, 15 *Rich.* 2, c. 3, *ante* 385; 2 *Hale* 16, 54; 1 *East*, P. C. 368. So, when a murder was committed in Milford Haven, at a place three miles wide, seven miles from the open sea, and sixteen miles below any bridge, and which being about twenty-three feet deep, was never known to be dry but at very low tides; it was held by the judges, that the admiralty had properly taken cognizance of the offence, although within the body of the county, (as all ports and havens are said to be; *Godb.* 261,) and although the common law tribunals had a concurrent jurisdiction. *R. v. Bruce*, 2 *Lea.* 1093; *Russ. and Ry.* 243. And generally, if a felony be committed in a navigable arm of the sea, the common law hath a concurrent jurisdiction, 2 *Hale*, 18. Still however, it is important to determine the line of demarcation between the body of a county and the high sea. By some, it is said to be sufficient, if a person standing at one side of an arm or creek, be able to discern the other, in order to fix it as within the body of the county. *Leigh v. Burley, Owen* 122; *F. Moo.* 892. Lord *Hale* (2 *Hale* 54; *Sum.* 151.) lays it down that a man should be able reasonably to discern from shore to shore, while *Hawkins* and others contend that the exclusive jurisdiction of the admiralty extends to the imaginary line joining opposite lands, and from one extremity of which, a man may see *what is done* at the other, 2 *Hawk.* c. 9, s. 14; 2 *Roll. Abr.* 169. Where there is any doubt, the jurisdiction of the common law ought to have the preference, 2 *East.* P. C. 804.

NOTE.  
Local jurisdiction.

If a person on land fire a loaded musket at, and kill a person in a ship at sea, the offence is cognizable by the admiralty, because it is committed where the death happens, and not at the place from whence the cause of death proceeds, *R. v. Coombe, Lea.* 432; and therefore, if the party, having been struck in the ship, had been carried ashore and there died, the common law tribunals, and not the admiral, would have had jurisdiction, 2 *Hale*, 17; 2 *Co.* 93; 5 *Co.* 107. So, when a mortal blow was given in the island of Zanzibar in the Indian seas, and the person struck was carried on board a ship then lying in a roadstead a few hundred yards from the shore, and there died, it was held that the offence was not cognizable under the 9 *Geo.* 4, c. 31, s. 7. *Eng.* (10 *Geo.* 4, c. 34, s. 10, *Ir. ante* 84.) as an offence committed *on land*, out of the united kingdom, *R. v. De Mattos*, 7 *C. & P.* 458. If goods be stolen upon

When offence is not completed in either jurisdiction:



## NOTE.

the high seas and carried ashore, the offender cannot be indicted for larceny in the county to which he carried them; because the original felony is not a taking, of which the common law will take cognizance, 3 *Inst.* 113; 2 *East. P. C.* 805. A statute which extends only to offences committed in England or Ireland, will not warrant a conviction by an admiralty commission for an offence committed at sea, *R. v. Amers, Russ. & Ry.* 286. So also, to warrant an admiralty conviction for procuring the destruction of a ship at sea, (See 11 *Geo. 2, c. 9, s. 2, ante* 21.) there must be evidence of an act of procurement done within the admiralty jurisdiction, *R. v. Easterby.* 1 *East. P. C. Add.* xxvi; 2 *Lea.* 947; *Russ. & Ry.* 37; and on the other hand, a conspiracy at sea is triable at common law, on proof of an overt act in the county where the venue is laid, *R. v. Brisac.* 4 *East.* 164.

## Accessories.

The admiralty has also, it is said, an exclusive authority to inquire of, and punish the offence of being accessory to a crime committed at sea; for, as the common law tribunals cannot take cognizance of the original offence, neither can they of the secondary. 9 *Co.* 93; 3 *Co.* 107; 13 *Co.* 53. But since the enactment of the 9 *Geo. 4, c. 54, ss. 23, 24, ante* 261, the jurisdiction seems rather to be concurrent than exclusive.

## Admiralty court, is a court of record, &amp;c.

Finally, it may be observed, that the court held in pursuance of the 11, 12 & 13 *Jac. 1, c. 2*, is a court of record; and as the commission by which it is constituted is also one of oyer and terminer, it possesses all the powers and privileges usually conferred by such an instrument.

## CHAPTER VI.

### OF THE COURT OF GENERAL SESSIONS OF THE PEACE.

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18 *Edw. 3, stat. 2, c. 2, Eng.*—Item, that two or three of the best of reputation in the counties shall be assigned keepers of the peace by the king's commission, (2) and at what time need shall be, the same, with other wise and learned in the law, shall be assigned by the king's commission to hear and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment reasonably, according to law and reason, and the manner of the deed.

Keepers of the peace shall be assigned, who shall hear and determine felonies, &c.

34 *Edw. 3, c. 1, Eng.*—First, that in every county of England shall be assigned for the keeping of the peace, one lord, and with him three or four of the most worthy in the county, with some learned in the law, (2) and they shall have power to restrain the offenders, rioters, and all other barators, and to pursue, arrest, take, and chastise them according to their trespass or offence; (3) and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; (4) and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past, (5) and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; (6) and to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the king and his people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endamaged, nor the peace blemished, nor merchants nor others passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders. (7) And also to hear and determine at the king's suit, all manner of felonies and trespasses done in the same county, according to the laws and customs aforesaid; (8) and that writs ofoyer and determiner be granted according to the statutes thereof made, and that the justices which shall be thereto assigned, be named by the court, and not by the party. (9) And the king will, that all general inquiries before this time granted within any seigniories, for the mischiefs and oppressions which have been done to the people by such inquiries, shall cease utterly and be repealed; (10) and that fines, which are to be made before justices for a trespass done by any person, be reason-

Justices may hear and determine all felonies and trespasses.

34 E. 3, c. 1. able and just, having regard to the quantity of the trespass, and the causes for which they be made.

Justices of peace to be sworn.

Two lawyers shall be in every commission of the peace where necessary.

13 *Rich. 2, c. 7, Eng.*—(*pars*) (2) And that the said justices be sworn duly without favour to keep and put in execution all the statutes and ordinances touching their offices.

17 *Rich. 2, c. 10, Eng.*—Item, forasmuch as thieves notoriously defamed, and others taken with the manor, by their long abiding in prison, after that they be arrested, be delivered by charters, and favourable inquests procured, to the great hindrance of the people, it is accorded and assented, that in every commission of the peace through the realm, where need shall be, two men of law of the same county where such commission shall be made, shall be assigned to go and proceed to the deliverance of such thieves and felons as often as they shall think it expedient.

21 & 22 *Geo 3, c. 42, s. 5.*—[*Recorders of cities may, in cases of sickness or necessary absence, and with the consent of the chief magistrate, appoint, by writing under hand and seal, a barrister at law to preside as deputy at sessions of the peace.*]

The deputy shall have all powers of the recorder.

The lord lieutenant may appoint certain persons to be assistant barristers.

6. That said deputy so constituted and appointed, shall have the same power and authority in all respects at such sessions, as said recorder would have had if personally present.

36 *Geo. 3, c. 25, s. 2.*—That it shall and may be lawful to and for the lord lieutenant or other chief governor or governors of this kingdom, for the time being, from time to time to nominate and appoint a practising barrister at law, of six years' standing at the least, or who shall have actually practised six years, and shall not at the time of his appointment to such office have retired from practice in his majesty's courts of law at Dublin, for more than two years, to act as a constant assistant to the justices at every sessions of the peace and adjournment thereof for all such counties at large (except the county of Dublin), as have not hitherto been divided into districts for the purposes of the said act of &c. [27 *Geo. 3, c. 40(a).*]; and whether the said lord lieutenant or other chief governor or governors shall think fit to divide such counties into districts for the purposes of the said act of &c. [27 *Geo. 3, c. 40.*] or not; and that every such barrister so appointed, shall be ipso facto in the commission of the peace, and a justice of the peace for the county in which he shall be so appointed, even though no commission should be issued for the purpose; and shall duly attend at every session of the peace and adjournment thereof, holden in such county, and shall continue such attendance during the whole of every such session and every adjournment thereof, save and except such sessions or adjournments thereof as shall be held *for the purpose of registering freeholders*, or for

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(a) The division of counties authorized by this act was declared to be, "for the better execution of the law, and for preserving the peace in this kingdom." The act however, after being continued several times, was allowed to expire on the 25th of March, 1815.

any other purposes save the administration of justice in criminal cases, and the hearing causes in manner herein mentioned by civil bill. 36 G. 3, c. 25.

5. That from and after the first day of September, (1796,) general sessions of the peace, or adjournments thereof, in every county at large in this kingdom, shall be holden eight times in every year at the least, *the four new sessions or adjournments to be holden in six weeks from the times respectively now by law appointed for the holding of the general quarter sessions of the peace*; and that it shall and may be lawful to and for the lord lieutenant, or other chief governor or governors of this kingdom, for the time being, by and with the advice of the privy council, to appoint proper and convenient towns in every such county, at which such sessions and adjournments shall be respectively holden. General sessions shall be held, at least eight times a year, and in towns appointed by lord Lieutenant.

17. (*pars.*) That the court of sessions, or any adjournment thereof, may lawfully sit in the county of Dublin, and in the several other counties at large in this kingdom, and be a full and competent court to hear and determine on, and do all manner of business whatsoever, as well criminal as civil, which can or may lawfully be done at any session of the peace, when the said chairman or assistant barrister shall be present, although the said chairman or assistant barrister should happen to be the only justice then and there present. *Provided however that such assistant barrister shall not, (except in hearing causes on civil bills,) act alone, until after twelve o'clock at noon*; and that nothing herein contained shall be deemed or taken in any manner to hinder or prevent all or any other of the justices of the peace for such counties respectively, from acting at such sessions or adjournments, in such manner as they lawfully might, if this act had not been made. Assistant barrister alone, in certain cases, sufficient to form a court.

41. [*Assistant barristers shall hold their offices during his majesty's pleasure.*]

42. [*In case of the sickness or necessary absence of any assistant barrister, the lord chancellor may appoint any qualified barrister to perform his duties.*]

62. [*The lord lieutenant and council may alter the division of counties made for the purposes of the 27 Geo. 3, c. 40; and grand juries shall make presentments, as at the original division of the county into districts.*]

38 Geo. 3, c. 65, s. 1.—[*His majesty may, by letters patent under the great seal of Ireland, appoint a king's counsel to be chairman of the sessions of the peace in the county of Dublin. Such chairman shall hold office during good behaviour, shall have all the powers of a justice of the peace, and shall preside at every session, unless one of the judges, or a serjeant at law, being a justice of the county, shall be present.*]

2. That if the chairman so appointed, be at any time absent from such session, any of his majesty's counsel learned in the Deputy of Chairman.

38 G. 3, c. 65. law, to be by such chairman appointed, may act as chairman of such session during his absence.

Chairman  
not displaced  
by the king's  
demise.

3. That the person appointed to the said office, shall during the said term continue therein, notwithstanding the demise of the king, (whom God long preserve,) or any of his heirs or successors.

But may be  
removed  
upon the  
address of  
parliament.

4. Provided always, and be it enacted, that it shall be lawful for his majesty, or for the chief governor or governors of this kingdom, to remove the person appointed to the said office, upon the address of both houses of parliament.

General  
sessions shall  
be held eight  
times a year.

38 Geo. 3, c. 25, s. 1. (*pars.*)—[*Recites 36 Geo. 3, c. 25, s. 5, and the expediency of holding the sessions, in both divisions of each county, at fixed times, and as nearly as possible, together.*] Be it therefore &c., that from and after the first day of May, (1789), general sessions of the peace shall be holden eight times in every year, in every county at large in the kingdom, except the county of Dublin, at the times following; that is to say, *in the week after the Epiphany*, in some one division of every such county, and in the same week, or in the week next ensuing at farthest, in the other division of every such county; *in the week next after Easter Tuesday*, in some one division of every such county, and in the same week, or in the week next ensuing at farthest, in the other division of every such county; *in the week next after Saint Thomas the Martyr*, in some one division of every such county, and in the same week, or in the week next ensuing at farthest, in the other division of every such county; *in the week after Saint Michael*, in some one division of every such county, and in the same week, or in the week next ensuing at farthest, in the other division of every such county: and that such sessions shall be good and effectual sessions for the administration of criminal justice, and for doing all other business of what nature soever, now by law appointed to be done at the general quarter sessions of the peace, for every part of the said counties respectively.

At what  
times quar-  
ter sessions  
shall be held.

1 & 2 Will. 4, c. 31(a), s. 9 — That in the year of our Lord, (1832,) and afterwards, the general or quarter sessions of the peace in and for every county (save and except the county of Cork(b),) shall be held at the following times; (that is to say,) the Easter sessions, on any of the fourteen days next after the twenty-fifth day of March; the Summer sessions, on any day between the fourth day and the twelfth day next after the last day of Trinity term, both days inclusive; the October sessions, on any of the fourteen days next after the eighth day of Octo-

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(a) Entitled "*An act to improve the administration of justice in Ireland.*"

(b) With respect to the time and manner of holding the general sessions of the peace in the county of Cork, see the act 4 Geo. 4, c. 93.

ber; and the Hilary sessions, on any of the fourteen days next after the twenty sixth day of December: and that all acts, matters, and things done, performed, and transacted at the times appointed by this act for the holding of the general or quarter sessions of the peace, shall be as valid and binding, to all intents and purposes, as if the same had been done, performed, and transacted at general quarter sessions of the peace holden at the times by law limited for the holding thereof before the passing of this act.

1 & 2 W. 4,  
c. 31.

11. That it shall and may be lawful for the chairman of the county of Dublin, and the assistant barrister in each county (except the county of Cork), at the general or quarter sessions to be held in such county next before each Hilary term, to fix and appoint the times for holding the next four sessions, of which times due notice shall be posted by the clerk of the peace, as now by law required to be done, on the first day of February in each year, and also six weeks before the day of holding each sessions.

The times of holding sessions shall be fixed at the Hilary sessions in each year.

6 & 7 Will. 4, c. 75 (a), s. 37.—That the court of quarter sessions shall, after the first day of every session, commence its sittings in the months of December and January, not earlier than nine, nor later than ten of the clock in the forenoon, and in other months not later than nine of the clock in the forenoon, save when prevented by the illness or unavoidable absence of the assistant-barrister or other fatality, and shall at once proceed with the criminal or civil business after the magistrate may be in attendance; but no decree or proceeding shall be in any manner impeached or questioned, in consequence of any trial or civil bill having been commenced or heard at any time before or after any of those hours; and that no trial or case, criminal or civil, or other business, shall be entered upon, after the hour of six of the clock in the afternoon of any day, nor shall any civil bill be called on after that hour, except at the request of both parties. Provided always, that it shall and may be lawful for the assistant-barrister to proceed in the criminal business, although no magistrate shall be in attendance; any statute, law, charter, or usage to the contrary notwithstanding.

During what hours, sessions shall be held.

Assistant barrister may act alone in criminal business.

53. [*The lord lieutenant, with the advice of the privy council, may divide any county or riding into districts, and appoint one or more places in each such district, in which courts shall be held for hearing civil bills, and transacting such criminal and other business as is cognisable at sessions of the peace.*]

54. That the assistant-barristers of the several counties in Ireland shall, at the sessions by law appointed for fixing the times for holding the sessions, at any additional place or places, which shall be as near to the time for holding the other sessions

Assistant barristers shall fix the times of holding additional sessions.

(a) Entitled, "*An act to extend the jurisdiction and regulate the proceedings of the civil bill courts in Ireland.*"

1 & 2 W. 4.  
c. 54.

as can conveniently be appointed by the clerk of the peace, who shall notify the time for holding such additional sessions in the same manner as he is now required to notify the time for holding the quarter sessions and other sessions of the peace.

59. [*Lord lieutenant and council may direct that a general session of the peace and civil bill court shall be held four times a year in all or any of the towns appointed for holding sessions; and shall appoint the baronies, half baronies, or parishes, for which respectively such sessions shall be held.*]

#### NOTE.

Before whom  
the sessions  
shall be held.

What  
offences may  
be tried  
there.

The general sessions of the peace is a court of record, held before two or more justices of the peace, one of whom must be of the quorum, 1 *Ch. C. L.* 134; 2 *Hale*, 167, or before the assistant-barrister, who is fully competent of himself to hold the sessions. *Ante* 393. This court owes its origin to the statutes 18 *Edw.* 3, c. 2, *Eng.* and 34 *Edw.* 3, c. 1, *Eng.* by virtue of which, a commission of the peace is made out and delivered to all such persons as the lord chancellor may choose to invest with the dignity of a justice of the peace, 1 *Ch. C. L.* 138. At first, that officer was only a conservator of the peace; and the power to *hear and determine*, subsequently given by the 34 *Edw.* 3, means only that such an authority may be delegated to them by commission, 1 *Bl. Com.* 351. For this reason, the caption of an indictment found at sessions must show that the commission gave the court jurisdiction over the offence, as that cannot be intended, *R. v. Carter*, 1 *Str.* 442. All the courts of quarter sessions have power to try any felony whatsoever; and, under the term "trespasses" in their commission, to try all misdemeanors which either involve an actual breach of the peace, as assaults and batteries, riots, unlawful assemblies, and the like, *Burn, J. "Sessions of the Peace*, IV. (1); or which have a tendency to a breach of the peace; as the bare soliciting a servant to steal his master's goods, *R. v. Higgins*, 2 *East* 5; libel, *R. v. Summers*, 1 *Lev.* 139, 3 *Salk.* 194; conspiracy, *R. v. Rispal*, 3 *Burr.* 1320; barratry, 2 *Hawk. c.* 8, s. 65; 2 *Saund.* 303, n. 1; perjury upon the statute, 31 *Geo.* 3, c. 18, s. 3, *ante* 347; night walking and haunting of bawdy houses, *Willow's case*, *Latch* 173; extortion, *R. v. Baynes*, 2 *Salk.* 680; 2 *Hawk. c.* 8, s. 66; cheating, *R. v. Brayne*, 1 *East.* 183, n.; forestalling, regrating, and engrossing, *Burn, J. Sessions of the Peace*, IV. (1) and "all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire;" in which words is included the vast number of offences over which a jurisdiction is given them by many statutes, and which are not particularly mentioned in the commission, *Id. ibid.* But it has been held

that justices at sessions have no authority to try a case of forgery, or perjury at common law. *R. v. Yarrington*, *Salk*, 406; *R. v. Gibbs*, 1 *East* 173; nor of gaming under the statute, *R. v. Frederick*, 2 *Ld. Ken.* 116. Although justices at sessions have power to try the gravest felonies, and their judgments can only be reversed for real error by a superior tribunal, 2 *Hale*, 46, yet it has never been the practice so to do, owing to an injunction contained in the commission, that if a case of difficulty, (i. e. in point of law, *Crompt.* 6,) should happen to arise, judgment should not be given, but the matter referred to the assizes. 1 *Ch. C. L.* 139, 2 *Hale*, 46. No court of quarter sessions has power to try any case of high treason, misprision of treason, or premunire. 2 *Hale*, 44; *Com. Dig.* "*Justices of the Peace*," B. 2. But in Ireland the justices are authorized by their commissions to inquire of treasons, i. e. to send bills of indictment before their grand juries; but when this is done, the bills, if found, must be removed by *certiorari*, into the King's Bench. The court of sessions cannot try any offence *created* by a statute passed since the reign of Edward 3, without express statutory authority so to do. *R. v. James*, 2 *Str.* 1256; 2 *Hawk. c.* 8, s. 30.

NOTE.

Notwithstanding the power to hear and determine, the court of sessions of the peace is not what is called a court of "oyer and terminer," and therefore, an act of parliament which directs that an offence shall be punishable by such court does not thereby authorize a trial at sessions. 1 *Hale*, 165. Where a statute in one section created a misdemeanor, and directed that the offender should be committed unto the next court of oyer and terminer, and in a subsequent section, prohibited the admitting to bail of a person arrested for such misdemeanor, unless he should first enter into a recognizance, conditioned to appear at the next court of oyer and terminer or general quarter sessions of the peace, to plead to any indictment found there, it was held that the sessions had jurisdiction to try the offence. *R. v. Cook*, 4 *M. & S.* 71. Generally, the justices have no commission of gaol delivery; but, in the county of Dublin, the justices are commissioned "to discharge our gaols of all prisoners therein detained and imprisoned for felony." Justices have power to inquire of offences by presentment, indictment, or information; but when the power of inquiry is conferred generally, the proceeding must be by indictment. 2 *Hawk. c.* 8, ss. 23, 28. Neither can they proceed upon indictments taken before coroners, or justices of oyer and terminer, or gaol delivery, but only upon indictments found at the then present, or some preceding session of the peace. *Hale Sum.* 168. It is irregular to reserve a case for the opinion of the King's Bench upon the trial of an indictment at sessions. *R. v. Salop*, 13 *East*, 95. Whatever two justices are authorized to do, the sessions may also do, unless an appeal be given from the justices to the sessions. *R. v. Boughton*, 1 *Ld. Raym.* 426. A



**NOTE.** court of quarter sessions cannot refer a matter over which it has jurisdiction to the determination of other persons; but it may, by consent of parties, refer it to any person to examine, and make a report to the court for its determination. *R. v. Harding*, 2 *Salk.* 477. The sessions may, by the common law, proceed to outlawry in cases of indictments found before them. 2 *Hawk. c. 8, s. 32.* They cannot award an attachment for a contempt in not complying with their order, 2 *Hawk. c. 8, s. 33*; neither can they amerce a justice of the peace for non-attendance thereat; and it seems, that if one justice at sessions use expressions toward another, for which, if he were a private person, he might be committed, or bound to his good behaviour, the sessions have no authority so to do; although one justice may, on proper occasions, compel any other justice to find surety of the peace. 2 *Hawk. c. 8, s. 17.* The court of quarter sessions has a discretionary power to make rules for the governance of the practice at sessions; but the court of King's Bench, for the purposes of justice, will interfere to control that discretion. *R. v. J. J. of Essex*, 2 *Chit.* 385; *R. v. J. J. of Wilts*, 10 *East.* 404; *R. v. J. J. of Lancashire*, 7 *B. & Cr.* 692; and such rules of practice will not control the express words of an act of parliament. *R. v. J. J. of Lincolnshire*, 3 *B. & Cr.* 548.

May make  
rules of prac-  
tice.

Of adjourn-  
ment.

The court of sessions, when regularly opened, can only be continued by adjournment; in the entry of which it ought to appear when the original session commenced, 2 *Hawk. c. 8, s. 14*; but the continuance of the session from day to day need not be particularly set out; for the session, while it continues, is considered in law as one day, *Id. ibid.*; and for the same reason, justices may alter their judgment at any time during the sessions. *R. v. J. J. of Leicestershire*, 1 *M. & S.* 442. An adjournment of sessions must be made by the same number of justices as is necessary to hold a session, *R. v. Westrington*, 2 *Bott's, P. L.* 733; and cannot therefore, be made by the crier alone, without the presence of any of the justices. When the quarter sessions met and sent up bills of indictment to the grand jury, and then adjourned to the following day, on which, and the day subsequent, the court was adjourned by the crier; after which, on the third day, the justices reassembled and tried the prisoner; it was held that a conviction so obtained was invalid; and although the court of King's Bench, on motion of the prisoner, ordered a record of the proceedings at such lapsed sessions to be made up, the justices at the Old Bailey sessions, before whom the prisoner was arraigned and tried upon a plea of *autrefois convict*, held that this record did not support the plea. *R. v. J. J. of Middlesex*, 5 *B. & Adol.* 1113; *R. v. Bowman*, 6 *C. & P.* 337.

## CHAPTER VII.

### OF THE COURT OF THE CORONER.

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4 *Edw. 1, stat. 2, Eng. (a)* A coroner of our lord the king ought to inquire of these things: first, when coroners are commanded by the king's bailiffs, or by honest men of the country, they shall go to the places where any be slain, or suddenly dead or wounded, or where houses are broken, or where treasure is said to be found, and shall forthwith command four of the next towns, or five or six, to appear before them in such a place; (2) and when they are come thither, the coroner, upon the oath of them shall inquire in this manner, that is to wit, if it concerns a man slain, whether they know where the person was slain, whether it were in any house, field, bed, tavern, or company, and if any and who were there: Likewise it is to be inquired who were, and in what manner, culpable, either of the act, or of the force, and who were present, either men or women, and of what age soever they be (if they can speak or have any discretion); (3) and how many soever be found culpable by inquisition in any of the manners aforesaid, they shall be taken and delivered to the sheriff, and shall be committed to the gaol; (4) and such as be founden, and be not culpable, shall be attached until the coming of the justices; and their names shall be written in the roll of the coroner. (5) If it fortune any such man be slain in the fields or woods, and be there found; first, it is to be inquired, whether he was slain there or not; (6) and if he were brought and laid there, they shall do so much as they can to follow their steps that brought the body thither, or of the horse which brought him, or cart, if perchance he was brought upon a horse or cart: (7) it shall be inquired also if the dead person were known, or else a stranger, and where he lay the night before; (8) and if there be any who are said to be guilty of the murder, the coroner shall immediately go unto their house, and shall inquire what goods they have, and what corn they have in their

Of what a coroner ought to inquire.

How he shall inquire of a death.

If any be implicated, the coroner shall inquire of their goods and lands.

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(a) Entitled "*A statute de officio coronatoris.*" This statute is altogether directory, and in affirmance of the common law, and does not restrain the coroner from any branch of his power, nor excuse him from the execution of any part of his duty not mentioned in the statute, and which was incident to his office at common law. 3 *Inst.* 52; 2 *Hawk.* c. 9, s. 21.

4 E. 1. st. 2.

graunge; and if they be freemen, they shall inquire how much land they have, and what it is worth yearly; and further what corn they have upon the ground. (9) And when they have thus enquired upon every thing, they shall cause all the corn and goods to be valued, and the land to be extended, so that they may be sold incontinently; and thereupon they shall be delivered to the whole township, which shall be answerable before the justices for all; (10) and likewise of his freehold, how much it is worth yearly over and above the service due to the lords of the fee; and the land shall remain in the king's hands, until the lords of the fee have made fine for it. (11) And immediately upon these things being inquired, the bodies of such persons being dead or slain shall be buried(a).

Of sudden deaths.

2. In like manner it is to be inquired of them that be drowned, or suddenly dead; and after it is to be seen of such bodies, whether they were so drowned, or slain, or strangled by the sign of a cord tied streight about their necks, or about any of their members, or upon any other hurt found upon their bodies, whereupon they shall proceed in the form above said; (2) and if they were not slain, then ought the coroner to attach the finders, and all other in the company (b) . . . (10) Also

Examination of wounds.

all wounds ought to be viewed, the length, breadth, and deepness, and with what weapons the wound is given, and in what part of the body the wound or hurt is, and how many be culpable, and if there are many wounds, who gave each particular wound. (11) All which things must be inrolled in the roll of the coroners. . . . (13) Concerning horses, boats, carts, and mills, whereby any are slain, that properly are called deodands, they shall be valued and delivered unto the towns, as before is said. (14) Concerning wreck of the sea, wheresoever it be

Of deodands.

found, if any lay hands on it, he shall be attached by sufficient pledges, and the price of the wreck shall be valued and delivered to the towns. (15) If any be suspected of the death of any man being in danger of life, he shall be taken and

Hue and cry.

imprisoned, as before is said. (16) In like manner, huy shall be levied for all murthers, burglaries, and for men slain, or in peril to be slain, as elsewhere is used in England, and all shall follow the huy and steps as near as can be; and he that doth not, and is convict thereupon, shall be attached to be afore the justices of the gaol, &c.

Coroners shall inquire of persons murdered

3 *Hen. 7, c. 1 Eng.* . . . (13) (*pars.*) That every coroner exercise and do his office according to the law as is afore rehearsed. . . . (20) And if any person be slain or murdered in the day, and the murderer scape untaken, that the township where the

(a) This inquiry as to the lands and goods is rarely if ever attended to in practice.

(b) Subsection 3, applies merely to treasure trove, and the remaining subsections to the 10th, and also the 12th to *appeals*, which have been abolished by the act 59 *Geo. 3, c. 46*, ante 383.

aid deed is so done, be amerced for the said escape, and that the coroner have authority to inquire thereof upon the view of the body dead; (21) and also justices of peace have power to inquire of such escapes, and that to certify before the king in his bench; (22) and that after the felony found, the coroners deliver their inquisitions afore the justices of the next gaol delivery, in the shire where the inquisition is taken, the same justices to proceed against such murderers, if they be in the gaol, or else the same justices to put the same inquisitions afore the king in his bench. (23) And forasmuch as coroners had not nor ought to have any thing by the law for their office doing, which ofttime hath been the occasion that coroners have been remiss in doing their office; (24) it is ordained, that a coroner have for his fee upon every inquisition taken upon view of the body slain, *xiiis. ivd.* of the goods and chattels of him that is the slayer and murderer, if he have any goods, and if he have no goods, then the coroner have for his said fee, of such amerciements as shall fortune any township to be amerced for escape of such murderer as is afore-said. (25) And if any coroner be remiss, and make not inquisitions upon the view of the body dead, and certify not according as is afore ordained, that the coroner for every default forfeit to the king an hundred shillings.

3 H. 7, c. 1.

and shall  
return their  
inquisitions.

32 Hen. 6, c. 2—[*Recites the misconduct of coroners in detaining jurors after giving their verdict, in cases of persons suspected to have been feloniously slain.*] That if by their oath they [the jurors] say that they do not know the felon, that the coroners shall give them another reasonable day; and if they say at the second day the same verdict, that then the said coroners shall discharge the said people. And if they will not, that it shall be lawful for them to depart, and to go to their houses without any impeachment of the king, or any of his officers or ministers. And that done, that the justices nor none of them shall put any habeas corpora for the same jurors, nor any special venire for the same matter(a).

Jury shall be  
discharged, if,  
on second  
day, they say  
they know  
not the felon.

4 Geo. 4, c. 52(b), s. I.—Whereas it is expedient that the laws and usages relating to the interment of the remains of persons against whom a finding of *felo de se* shall be had, should be altered and amended: Be it &c., that from and after the passing of this act, it shall not be lawful for any coroner

The remains  
of persons  
found *felo de  
se* shall be  
privately  
buried in the  
churchyard  
at night.

(a) The practical interpretation of this ancient statute seems to be;—that if the coroner, upon view of the body, shall believe that a murder has been committed, he shall not discharge the jury upon the first day of the inquest, even though no evidence to implicate any individual should be given; but it shall be adjourned to another day, when, if no further evidence be offered, the jury shall be discharged.

(b) Entitled “*An act to alter and amend the law relating to the interment of the remains of any person found felo de se.*”

4 G. 4, c. 52.

or other officer having authority to hold inquests, to issue any warrant or other process directing the interment of the remains of persons, against whom a finding of *felo de se* shall be had, in any public highway; but that such coroner or other officer shall give direction for the private interment of the remains of such person *felo de se*, without any stake being driven through the body of such person, in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred, if the verdict of *felo de se* had not been found against such person; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night.

Rites of  
Christian  
burial not to  
be performed.

2. Provided nevertheless, that nothing herein contained shall authorize the performing of any of the rites of Christian burial on the interment of the remains of any such person as aforesaid; nor shall any thing hereinbefore contained, be taken to alter the laws or usages relating to the burial of such persons, except so far as relates to the interment of such remains in such churchyard or burial ground, at such time and in such manner as aforesaid.

Duty and  
power of  
coroners  
upon in-  
quests.

9 Geo. 4, c. 54, s. 4.—That every coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material; and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer or gaol delivery, or other court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court.

Courts may  
fine justices  
and coroners  
for neglect.

5. That if any justice or coroner shall neglect or offend in any thing contrary to the true intent and meaning of any of the provisions of this act, it shall be lawful for the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such court is hereby authorized and required, upon examination and proof of the offence, in a summary manner to set such fine upon every such justice or coroner as the court shall think meet.

Those pro-  
visions shall  
apply to all  
justices and  
coroners.

6. That the provisions of this act relating to justices and coroners shall apply to the justices and coroners not only of counties at large, but also of all other jurisdictions.

6 & 7 Will. 4, c. 89 (a).—Whereas it is expedient to provide for the attendance of medical witnesses at coroners inquests, also remuneration for such attendance, and for the performance of post mortem examinations at such inquests; be it &c., that from and after the passing of this act, whenever upon the summoning or holding of any coroner's inquest it shall appear to the coroner that the deceased person was attended at his death or during his last illness by any legally qualified medical practitioner, it shall be lawful for the coroner to issue his order, in the form marked (A.) in the schedule hereunto annexed (b), for the attendance of such practitioner as a witness at such inquest; and if it shall appear to the coroner that the deceased person was not attended at or immediately before his death by any legally qualified medical practitioner, it shall be lawful for the coroner to issue such order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death has happened; and it shall be lawful for the coroner, either in his order for the attendance of the medical witness, or at any time between the issuing of such order and the termination of the inquest, to direct the performance of a post-mortem examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness or witnesses who may be summoned to attend at any inquest; provided that if any person shall state upon oath before the coroner that in his or her belief the death of the deceased individual was caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person, such medical practitioner or other person shall not be allowed to perform or assist at the post-mortem examination of the deceased.

6 & 7 W. 4,  
c. 89.

Coroner may  
summon me-  
dical witness,  
and direct a  
post mortem  
examination.

2. That whenever it shall appear to the greater number of the jurymen sitting at any coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witness or witnesses who may be examined in the first instance, such greater number of the jurymen are hereby authorized and empowered to name to the

A majority of  
the jury may  
require the  
coroner to  
summon ad-  
ditional medi-  
cal evidence.

(a) Entitled "*An act to provide for the attendance and remuneration of medical witnesses at coroners' inquests.*" (A.) Form of summons.

(b) Coroner's inquest at \_\_\_\_\_ upon the body of \_\_\_\_\_  
By virtue of this my order as coroner for \_\_\_\_\_ you are  
required to appear before me and the jury at \_\_\_\_\_ on the \_\_\_\_\_  
day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_, at \_\_\_\_\_ of  
the clock, to give evidence touching the cause of death of \_\_\_\_\_, [and  
then add, when the witness is required to make or assist at a post mortem  
examination, and make or assist in making a post mortem examination of  
the body, with [or without] an analysis, as the case may be,] and report  
thereon at the said inquest.

(Signed)

Coroner.

To

Surgeon, [or M. D., as the case may be.]

6 & 7 W. 4,  
c. 89.



coroner in writing any other legally qualified medical practitioner or practitioners, and to require the coroner to issue his order, in the form herein before mentioned, for the attendance of such last-mentioned medical practitioner or practitioners as a witness or witnesses, and for the performance of a post-mortem examination, with or without analysis of the contents of the stomach or intestines, whether such an examination has been performed before or not; and if the coroner, having been thereunto required, shall refuse to issue such order, he shall be deemed guilty of a misdemeanor, and shall be punishable in like manner as if the same were a misdemeanor at common law.

Fees to medical witnesses.

3. (*pars.*) That when any legally qualified medical practitioner has attended upon any coroner's inquest, in obedience to any such order as aforesaid of the coroner, the said practitioner shall for such attendance at any inquest in Great Britain, be entitled to receive such remuneration or fee as is mentioned in the table marked (B.), in the schedule hereunto annexed; and for any inquest held in Ireland, the said practitioner shall be paid in the manner provided by the laws in force in that part of the united kingdom.

No fee for examination without previous order of coroner.

4. That no order of payment shall be given, or fee or remuneration paid, to any medical practitioner for the performance of any post-mortem examination which may be instituted without the previous direction of the coroner.

No fee to a medical man who attended the deceased in a public hospital.

5. Provided also, and be it further enacted, that when any inquest shall be holden on the body of any person who has died in any public hospital or infirmary, or in any building or place belonging thereto, or used for the reception of the patients thereof, or who has died in any county or other lunatic asylum, or in any public infirmary or other public medical institution, whether the same be supported by endowments or by voluntary subscriptions, then and in such case nothing herein contained shall be construed to entitle the medical officer whose duty it may have been to attend the deceased person as a medical officer of such institution as aforesaid to the fees or remuneration herein provided.

Penalty for non-attendance of medical man.

6. That where any order for the attendance of any medical practitioner as aforesaid shall have been personally served upon such practitioner, or where any such order not personally served shall have been received by any medical practitioner in sufficient time for him to have obeyed such order, or where any such order has been served at the residence of any medical practitioner, and in every case where any medical practitioner has not obeyed such order, he shall for such neglect or disobedience forfeit the sum of five pounds sterling, upon complaint thereof made by the coroner or any two of the jury before any two justices having jurisdiction in the parish or place where the inquest under which the order issued was held, or in the parish where such medical

practitioner resides ; and such two justices are hereby required, upon such complaint, to proceed to the hearing and adjudication of such complaint, and, if such medical practitioner shall not show to the said justices a good and sufficient cause for not having obeyed such order, to enforce the said penalty by distress and sale of the offender's goods, as they are empowered to proceed by any act of parliament for any other penalty or forfeiture.

6 & 7 W. 4,  
c. 89.

6 & 7 Will. 4, c. 116 (a), s. 97.—[*The grand jury of every county may present a sum not exceeding £30 for each coroner, (their number being limited as in the schedule); and shall apportion such sum among the coroners, according to the number of inquests held. Not more than two pounds to be paid for each inquest.*]

98. [*A certificate of each inquest shall be laid by the coroner before the presentment sessions.*]

99. That it shall and may be lawful for any coroner before whom any physician, surgeon, apothecary, chemist, or other person practising medicine or surgery, shall, in obedience to a summons from such coroner, attend and be examined as a witness at any inquest relative to the death of any person, to grant such witness an order, signed by such coroner, upon the treasurer of the county wherein such inquest shall be held, for such sum not exceeding three pounds as to such coroner shall seem fit ; and the amount of all such payments shall be presented by the grand jury to be raised off the county at large, or any barony thereof, in like manner as the sum presented for the inquest whereat such party may have attended : provided always, that the coroner shall certify to the presentment sessions of the barony in which the inquest was held, the amount and particulars of all such sums so by him ordered to be paid, and that such payment shall have been approved thereat, but not otherwise.

Presentment  
for medical  
witnesses ex-  
amined on  
inquests.

100. [*No presentment shall be made for a coroner who has been guilty of any neglect of duty.*] (b).



The court of the coroner is a court of record ; but, unlike those which we have been considering, it is one of preliminary inquiry only, and not of determination ; the right of proceeding to trial and judgment having been taken from it by Magna Charta, *Ante*, 367. The coroner is the sole judge of

NOTE.

Jurisdiction  
generally.

(a) Entitled "*An act to consolidate and amend the laws relating to the presentment of public money by grand juries in Ireland.*"

(b) As to the qualification and election of coroners, see the acts 3 Geo. 4, c. 115, and 10 Geo. 4, c. 37, s. 4.



## NOTE.

this court; and although there may be several coroners in the same county (*b*), yet the act of one is sufficient in all matters relating to inquests of death; and after the proceeding has been concluded by one, the act of another will be void. 2 *Hale*, 59. Coroners are all conservators of the peace, and may bind over any one who commits an affray in their presence. 1 *Bac. Abr.* 491. So, the coroner may arrest, or cause another to arrest any felon. 2 *Hale*, 88. But it seems he cannot grant process of the peace; and the security taken by him for the keeping of the peace, (except only when he takes it as judge of his own court, for an affray committed in it,) is to be looked on as an obligation rather than a recognizance. *Burn, J. "Justices of the peace,"* I. Even before inquisition, a coroner may issue his warrant for arresting, and after arresting may commit any person suspected of being a principal, or accessory before the fact to murder. 2 *Hale*, 107.

## His privileges.

Coroners are exempt from serving offices which are inconsistent with the duties of a coroner, and are privileged from being summoned on juries. 3 & 4 *Will.* 4, c. 91, s. 2. It would seem also, that coroners are privileged from arrest in civil cases, while holding an inquest, or while going to or returning from the place. *Jerv. Cor.* 63.

## For what he may be punished.

If after notice given, a coroner neglect to proceed with the inquest in a reasonable time, he may be fined and imprisoned, 2 *Hale*, 58; or, if he cause a body to be disinterred, when it is evident from the length of time it has been buried—*e. g.* seven months—no information can be obtained from the inspection of it, it would seem he may be fined, *Jerv. Cor.* 66; *R. v. Clarke*, 1 *Salk.* 377, *Carth.* 72. If he is guilty of extortion, 3 *Inst.* 149, 1 *East. P. C.* 382, or other gross misconduct in the discharge of his duty, he may be called to account by indictment or criminal information. As instances of such misconduct, may be mentioned, the taking an inquest without viewing the body, *Jerv. Cor.* 65; wilfully misleading the jury, so as to induce them to find an improper verdict, *R. v. Wakefield*, 1 *Str.* 69; and see *R. v. Coates*, *Dick. J.* 515; the taking off a jurymen after being sworn, *R. v. Stukely*, 12 *Mod.* 493; returning an inquisition different from that which would be warranted by the verdict, *R. v. Marsh*, 3 *Salk.* 172; and committing for murder a person concerned in what the jury find to be an accidental death, *R. v. Scory*, 1 *Lea.* 43. But he shall not be punished for an absurd presentment of a jury, for he cannot refuse their presentment. *Smith's Case*, *Comb.* 386.

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(*b*) As to the number of coroners which may be in the several counties of Ireland, see the tables to the acts, 4 *Geo.* 4, c. 43, and 6 & 7 *Will.* 4, c. 116.

In Ireland, there are three sorts of coroners; First, coroners by virtue of their office, as the judges of the court of King's Bench, who, as we have said, *ante*, 371 are the supreme coroners of the land; and the clerk of the crown of that court, whose duty it is to preside as coroner in all cases of sudden death happening in the court of King's Bench, or in the Four Courts' Marshalsea. *16th Rep. of Com. of Inq.* 29.—Secondly, the county coroners. These are elected by the freeholders of the county, assembled at a county court specially convened by the sheriff, in obedience to a writ *de coronatore eligendo*, directed to him, and issuing out of chancery. *1 Bl. Com.* 347. But the coroners of the county of the city of Dublin are elected by the board of aldermen. The only qualification required in them is, that they shall be aldermen. They hold office for life, or until promotion to the mayoralty. The duties are usually performed by each coroner in alternate months. *App. to 16th Rep. of Com. of Inq.* 151.—Thirdly, the Admiralty coroner. This office is held by the judge of the court of admiralty or his deputy. At this day no instance can be traced of any exercise of jurisdiction by the clerk of the crown or admiralty coroner; all the duties of the office being discharged by the county coroners. *16th Rep. of Com. of Inq.* 29.

NOTE.  
Different  
kinds of  
coroners.

The jurisdiction of the county coroner is limited to the county or precinct for which he is elected, *Finch*, 388; and does not prevail on the open sea, between the high and low water mark when the tide is in: but he has authority over offences committed in such places when the tide is out. *1 Bac. Abr.* 492. When a wound or other cause of death is given in one county, and the death takes place in another, the coroner of the latter county shall proceed to take the inquisition, *Jerv. Cor.* 51, and, as incident to such his duty, he shall inquire of all accessories *before*, (but not *after* the fact, *Mo.* 29,) wheresoever their offence may have been committed, whether upon the high seas, or within another county. *2 Hawk. c. 9, s. 26*; *9 Geo. 4, c. 54, s. 23, ante* 361. A coroner may also inquire of all deaths which happen on the boundaries of his county, or within five hundred yards of such boundaries, or which happen upon a journey or voyage upon a navigable river or canal; provided the carriage or vessel have in the course of the journey or voyage passed into or through his county. *9 Geo. 4, c. 54, ss. 26, 27, post.*

The admiralty coroner has an exclusive jurisdiction over all matters arising upon the high seas, or between high and low water mark when the tide is in, *2 Hale*, 54. When the cause of death is given on or from the land, but the death occurs at sea, the inquisition belongs to the admiralty coroner. *Jerv. Cor.* 59. When the death happens in great ships while lying in large rivers, and beneath the lowest bridges where the water

**NOTE.** flows and reflows, 15 *Rich. 2, c. 3, ante 385*, or where it happens in a bay, or other arm of the sea, and within the body of a county, *Rex. v. Bruce, Russ. & Ry. 243*, or when it happens on board a ship lying in harbour, even though it be a vessel of war in full commission, either coroner may hold the inquest on board. *R. v. Soleguard, Andr. 231, Str. 1097*. In all such cases of concurrent jurisdiction, the coroner who first seizes the body is entitled to hold the inquisition; and if he proceed to do so, the authority of the other is determined. *Jerv. Cor. 58*.

in what cases  
inquests  
should be  
held.

In all cases of violent or unnatural death, and in all cases of death in prison whatever be the cause, a coroner's inquest ought to be held upon the body while it is fresh, and if possible, while it remains in the same situation as when the death occurred. 2 *Hawk. c. 9, s. 21*; *R. v. Clerk, 1 Salk. 377*. The constable of the district, or some friend of the deceased, or (if the party have died in prison,) the gaoler ought forthwith to give notice to the coroner. *Andr. 235*. A coroner is not bound *ex officio* to go to take an inquest, but, especially in case of the death of a private person, ought to wait until he is sent for; and it is an indictable misdemeanor, to bury a man who has died a violent death, without holding an inquest upon him. *R. v. Clerk, Holt. 167, 1 Salk. 377*.

Upon receiving information of the death, the coroner himself, (for he cannot appoint a deputy, *R. v. Farrant, 1 Chit. R. 745*), ought forthwith to proceed in taking the inquest. If the body have been lately interred, as within fourteen days, he may lawfully order it to be disinterred; but if the body cannot be found, or if it be so much decomposed before the coroner views it that he cannot be assisted by the view in taking the inquest, or if there be danger of infection in digging it up, the inquest ought not to be taken by the coroner, unless he have a special writ or commission for that purpose; but the matter ought to be referred to the magistrates, who will take the inquest upon the testimony of witnesses. 2 *Hawk. c. 9, s. 23*; 5 *Co. 110*. A practice exists in Ireland for two magistrates, in the absence of a coroner, to take inquisitions in cases of sudden death, *super visum corporis*. This practice however, is not sanctioned by law; and the inquisition so taken cannot be used as an indictment, should such a course be found expedient. 16th *Rep. of Com. of Inq. 32*.

Of summon-  
ing the jury.

The coroner's first duty in taking the inquest, is to make out a precept to some constable of the place, and (if the deceased have been a prisoner,) to the gaoler, requiring the attendance of a jury at a certain time and place to proceed with the inquest. This, being a judicial act, cannot be held upon a Sunday, and if so held, it is void. *Hoyte v. Ld. Cornwallis, 1 Str. 783*. When the constable has received the precept, he makes out a summons for each person whose attendance is desired. No

particular qualification is required for a coroner's juror, further than that he must be a *good and lawful* man, that is, neither an alien, an outlaw, or a convict of treason, felony, or any infamous crime, 2 *Hale*, 60, and see the 3 & 4 *Will.* 4, c. 91, s. 40, by which coroners' juries are exempt from the operation of that, the general jury act. The summons is either delivered to the person himself, or left at his house with some member of his family. *Jerv. Cor.* 290. The ordinary course of proceeding adopted by constables in this country, to procure the attendance of jurors, namely, of seizing passengers and compelling them to go before the coroner, appears to be altogether unauthorized by law.

NOTE.

At the day and hour appointed, the constable, and (in case of a prisoner,) the gaoler attend at the place appointed and deliver to the coroner their precepts, with a list or schedule of the jurors whom they have summoned, annexed. *Jerv. Cor.* 290. Upon the precept is indorsed the constable or gaoler's return, which is subscribed by the officer making it, and both are kept by the coroner. *Id. ibid.* The coroner then proceeds to call over the names of the persons returned, whose appearance, as they answer, is denoted by some mark prefixed to their names. In inquests upon prisoners, one half of the jury ought to be prisoners of the gaol, *Umfr.* 212, provided so many can be got, who are not convicts of treason, felony, or an infamous crime. At least twelve; and not more than twenty-three should be sworn upon a coroner's jury, 2 *Hale*, 59. If a sufficient number do not answer upon the first call, the names of defaulters should be called over a second, and a third time. Those who persist in making default may be presented or indicted at assizes or sessions, and amerced, but cannot be fined by the coroner, 2 *Hale*, 62. If requisite, the number may be made up from the bystanders. The jury having been called over, the coroner proceeds with them to the room or place where the dead body is lying, and there they are sworn by the coroner himself, *R. v. Ferrand*, 3 *B. & Ald.* 260, upon view of the body, the foreman first, and afterwards by three or four at a time. Strictly speaking, jurors upon a coroner's inquest are not challengeable, *Jerv. Cor.* 223; but it is better to yield to any fair objection, which would in other cases be a cause of challenge, than run the hazard of vitiating the inquisition by the impannelling of improper persons. The jury, upon being sworn, proceed to examine the body; and the coroner makes such observations as occur to him, at the same time drawing their attention to the appearances which elicit his remarks. The whole body ought, if possible, to be seen and examined, *R. v. Ferrand*, 3 *B. & A.* 264. After this, all may retire to some convenient apartment, 1 *Bac. Abr.* 495, and the coroner having there called over the names of the jury, and ascertained that they are satisfied with the view, details to them the object of the inquiry, viz. to ascertain the cause of death, 1 *Jerv. Cor.* 291. Proclamation is then made that all such

Proceedings  
at the inquest.

## NOTE.

persons as can give evidence touching the death, shall come forward. They may be admitted either together or singly, in the discretion of the coroner. It is the duty of all persons who have any thing material to communicate, immediately to present themselves. If they do not, they may be summoned by the coroner. If the person so summoned should neglect to appear and give evidence, the coroner, after examination on oath of the summoning officer, may issue a warrant against him, for his apprehension. If the person, having been arrested, refuses to be examined as a witness, or, having been examined, refuses to sign his examination, he may be committed to gaol. *Burn. J. Coroner*, VII.

Examination  
of witnesses.

As soon as a witness appears, the coroner swears him, takes down in writing, his name, place of abode, and occupation, and then proceeds to examine him. His examination, or so much thereof as is material, ought to be taken down in writing. In performing this part of his duty, the coroner ought to be most particular in taking down the true and genuine sense of the evidence of each witness successively as delivered in detail, not indeed in letters, syllables, or even words, though these should not be needlessly departed from; but the fair and obvious meaning of the words spoken, and not the final result of the evidence, 1 *East, P. C.* 384. The most correct mode of taking an examination is to follow the precise expressions of the witness, in the first person, *Jerv. Cor.* 31. Previous to dismissing each witness, the coroner should inquire of the jury, whether they wish that any further questions should be put. After the examination has been concluded, the coroner proceeds to read over to the witness his information, and requires him to sign it: the coroner should also subscribe it. If the slightest doubt exist as to what may have been the immediate cause of death, as in cases of death in a pugilistic encounter, *R. v. Quinch*, 4 *C. & P.* 571, a surgeon or other medical man ought to be examined; and this is a precaution which ought very rarely to be dispensed with.

Of adjourn-  
ment.

When the examination of witnesses cannot be concluded in a single day, or when it is suspected that undue influence has been made use of, or for other good and sufficient cause, the coroner may, in his discretion, adjourn the inquest to a future day, and to another or the same place, taking the recognizances of the jurors to attend at the time and place appointed, and notifying to the witnesses when and where the inquest will be proceeded with. Upon the adjourned meeting, proclamation is again made; when the coroner, having called over the names of the jurors, shortly recapitulates the state of the inquiry, and proceeds in the examination of the witnesses.

Charging the  
jury.

All the evidence which is offered having been gone through, on both sides, as well on behalf of the king, as of the persons who may appear to be implicated, and who have a right to be heard, *R. v. Scory*, 1 *Lea.* 43, the coroner sums up the evidence to the jury, and states at the same

time his view of the law, as applicable to the facts deposed to. **NOTE.**  
*Jerv. Cor.* 293. The primary consideration is the *cause of death*; that having been ascertained, the question of *deodand* may arise incidentally. Upon these two subjects we shall offer a few observations.

In the inquests upon infants, a preliminary enquiry often arises, viz. whether the child has been stillborn. If, upon the evidence of a medical witness, this be decided in the affirmative, the inquiry is at an end, and the jury have only to give a verdict to that effect; but if in the negative, the next question in such case, and the first in all others, is, how the party came by his death? In order to a solution of this, it is necessary to consider—First, The means by which life has been overcome, as by poison, wounding, drowning, &c.—Secondly, How those means have been applied; which must be in one of these four ways; 1. Designedly, by the deceased himself. 2. Designedly, by another person, and under circumstances, which being neither justifiable or excusable, proclaim the slayer to be guilty of manslaughter, or perhaps of murder itself. 3. By the design of another, but under circumstances which justify or excuse the slayer. 4. By accident, or by an irrational agent.

If the jury should be of opinion that the deceased, being of the age of discretion(a) and *compos mentis*, either by his own deliberate and voluntary act, and of his set purpose, has laid violent hands upon himself, 1 *Hale*, 411, or that while devising the death of another, he actually accomplished his own; as, for instance, that while attempting to shoot another, he himself, from the bursting of the gun or other unforeseen circumstance, becomes the victim of his murderous design, 1 *Hale*, 413; in any of these cases, it is their duty to bring in a verdict of *felo de se*. But where a person was killed by another, although at his own desire, he is not a *felo de se*, and the slayer is a murderer, 1 *Hawk. c.* 27, s. 6. So also, when the act which led to his death was in itself innocent; as if a limb have been amputated in order to prevent gangrene, or the like, the party is not a felon of himself, 1 *Hale*, 412. Neither is the lunatic who kills himself in a fit of lunacy; but under this term the law does not comprise that species of mental aberration, the presence of which, it has been said, is evidenced by the very act of self-destruction. It must be that alienation of mind, which renders a man mad or frantic, and destitute of the use of reason. If it were otherwise, it must necessarily follow that self-murder is not criminal, for a

1. Designed self-destruction.

(a) At the age of fourteen, every person is presumed to have arrived at such maturity of intellect as to be capable of committing felony; below seven years of age, no one. Between these two periods, the question is to be decided by the evidence of capacity adduced in each particular case, 1 *Hale*, 25, 26.

**NOTE.** madman is incapable of crime. *Id. ibid.* To constitute the offence, the party must have died within a year and a day after the cause of death has been administered. The legal consequences of a verdict of *felo de se* are, a forfeiture of all goods and chattels, but not of lands, 1 *Hale*, 413, and also the interment of the body in the manner pointed out by the statute, 4 *Geo.* 4, c. 52, *ante*, 399. In order to entail the consequences of forfeiture, the jury should be charged to inquire as to the property of which the party died possessed; but in modern times this is rarely if ever done upon coroners' inquests, 1 *Jerv. Cor.* 293. Should it be thought advisable, the omission may afterwards be supplied by a writ of *melius inquirendum*, 1 *Hale*, 415. The offence of self-felony admits of accessories before the fact; and of their guilt, diligent enquiry should be made. Thus if one persuade another to kill himself, he is an accessory to the felony, and is guilty of murder, 1 *Hawk.* c. 27, s. 6; and if he be present, abetting him while he does so, he will be guilty of murder as a principal, *R. v. Dyson, Russ. & Ry.* 523. Nor is the case altered by both having encouraged each other to murder themselves. The party who should fail in the attempt would be a principal in the murder of the other. *Id. ibid.*

2. Felonious killing by another.

In all cases whatsoever, in which human life is taken away, under circumstances that the law will not justify or excuse, the homicide is felonious, 3 *Inst.* 54. And if nothing else be proved but the death of one individual by the agency of another, the presumption is, that the crime of murder has been committed, 9 *Co.* 67, b. Every circumstance therefore which would mitigate the homicide to manslaughter, or make it justifiable or excusable, ought to be admitted in evidence before a coroner's jury. There can be no accessory before the fact to the crime of manslaughter, 1 *Hale*, 347, 450, 616. For the law as to these two crimes of murder and manslaughter and what ingredients are requisite to constitute each, reference may be had to *Archbold's Criminal Law*, 314, 5th Ed.

3. Justifiable homicide.

The law on this subject will be found succinctly stated in the same work, p. 326.

4. Accidental death.

In all such cases, life must have been taken away without the default or procurement of another man; as where one is killed by a fall from a horse, cart, &c. and which, though it be not properly homicide, nor punishable as a crime, yet is taken notice of by the law as far as the nature of the thing will bear, in order to raise the greater abhorrence of murder: and the unhappy instrument or occasion of such death is called a *deodand*, and is forfeited to the king or to his grantee; as also are all such weapons whereby one man kills another, 1 *Hawk.* c. 26, s. 3.

Of deodands.

A deodand is a personal chattel, lawfully presented as forfeit, from its having been the occasion of human death.

*Personal Chattel.*] A thing which is attached to the soil, or freehold as it is called ;—as a growing tree, a bell in a belfry, the wheel of a mill or forge &c., cannot be forfeited as a deodand, *R. v. Cross*, 1 *Keb.* 728, *R. v. Wheeler*, 6 *Mod.* 187, *sed vide* 1 *Salk.* 220; 1 *Hale*, 420. But it is otherwise, if by any cause whatsoever it should be separated, and after the moment of severance be instrumental in causing death; for instance, if a tree, having been torn up by the wind, strike against and kill a man, it may be forfeited. *Id. ibid.*

*Lawfully presented as forfeit.*] Nothing can be forfeited as a deodand, until it has been presented as such by twelve men. And this may be either by the coroner's jury, or the grand jury at assizes or sessions. And for this reason it is that in indictments found by the grand jury for the death of a man, the value of the instrument with which the death is inflicted is usually stated, 1 *Hale*, 419; 3 *Inst.* 57. The death must also have happened within a year and a day after the wound has been given, or nothing is forfeit; but if the party die within that time, the forfeiture shall have relation to the wound given, and cannot be saved by any alienation or other act whatsoever in the mean time, 1 *Hawk. c.* 26, s. 7.

*Occasion of human death.*] Chattels become forfeit as deodands, as well in cases of intentional as of accidental death. Thus, if a man fall from a waggon, or be slain by a sword in the hand of his adversary, the waggon and sword are equally liable to forfeiture, 1 *Hale*, 419. Deodands are of two kinds. 1. Those which *move to the death* while the man is passive; and 2dly, those which are quiescent while the man is active. In the former case, not only the part which is immediately in motion, but every thing which moves with it, and aids in effecting death is forfeit: in the latter case, that part only which is the immediate cause is forfeited, 1 *Hawk. c.* 26, s. 6. In this latter case also, nothing is claimable as a deodand in respect of the death of a person below the age of discretion, i. e. fourteen years; because such death ought to be attributed to the heedlessness of the infant, who had not discretion to look to himself, rather than to a want of due caution on the part of the owner or user of the chattel, 1 *Hale*, 422. *sed vide* 1 *Hawk. c.* 26, s. 4. If a loaded cart pass over a man's body and kill him, the horse, cart, and loading shall be all forfeited, because all have aided in the death; but if the man had been killed by a fall from the wheel of the cart when it was not in motion, the wheel alone would have been forfeited. *Id. ibid.* If a tree fall upon the branch of another tree, and both fall to the ground, and the branch kill a man, the tree and branch are both forfeit, *Case of the Lord of the Manor of Hampstead*, 1 *Salk.* 220. A cart and loaded waggon met upon the road, and in the endeavour to pass, the cart was driven on a bank, whereby a person that was in it was thrown just before the wheel of the waggon, which passed over and killed him; it was there held that the



**NOTE.** cart, waggon, loading, and all the horses, were deodands, because all moved *ad mortem*. *Id. ibid.* 1 *Hale*, 420, S. C. If a man fall from a hayrick, a scaffold, or the like ; or if a bank of earth fall upon him in a mine ; the hayrick, or scaffold, or bank of earth, are liable to forfeiture, 1 *Hale*, 420. So if a bull, ox, &c. run against and gore him to death, the animal is a deodand when presented, 3 *Inst.* 57, but it is questionable whether a dog which worries a man to death can become forfeit, the law recognising no property in such an animal. If, in passing a swollen stream on horseback, the horse be carried down the stream, whereby his rider is thrown and drowned, the horse is not liable to forfeiture, *Lord Chandois's case*, *Cro. J.* 483, *Poph.* 136 ; but it would have been otherwise if the horse having taken fright had plunged and thrown his rider, 1 *Hawk. c.* 26, s. 6. Notwithstanding some contrariety in the old cases, it would seem to be the true principle, that if a man fall from a horse by reason of intoxication, the violence of another person, or a want of ordinary skill in riding, and be killed, the horse is not forfeit.—See 1 *Hale*, 420 ; 1 *Hawk. c.* 26. If a person fall out of a ship in fresh water and be drowned, the ship is forfeited. It would have been otherwise if the ship had been in salt water, whether in the open sea, or in an arm of the sea, and within the body of a county, 3 *Inst.* 57 ; 1 *Hawk. c.* 26, s. 6. But it is not from this to be inferred, (as has been done, *Jerv. Cor.* 201,) that deodands are not leviable save where the common law prevails : for there is no authority for saying, that if a man be killed in a ship at sea, by a part of the cargo falling upon him, that part should not be forfeited. The law as to the drowning of a man at sea rests upon the same principle as the case of a horse being carried down a stream and throwing his rider. In the one case the undulation of the water, and in the other the violence of the current are the real causes of the death, both of which are beyond human control. Besides, it would be of pernicious consequence to trade, if the whole ship were liable to forfeiture on account of an accident to one of its crew ; and this seems to have influenced the crown in its answer to several petitions of the commons, praying that there should be no deodand in case of a man falling from a ship, 3 *Inst.* 58.

When the deodand has been found by the inquest to have been the cause of the death, the sheriff becomes answerable for it, and is to levy its value. The jury ought therefore to find its value. At this day it is usual in doing so, to confine the deodand to the very thing, or part of the thing which caused the death, and to impose a value which is generally very trivial, 1 *Hawk. c.* 26, n 3 ; *Jerv. Cor.* 204. The legality of this course has been questioned before the king's bench, but that court has uniformly, in modern times, refused to interfere to give any support to a claim founded only in ancient super-

stitution, and repugnant to the principles of sound reason and true policy, *Fost.* 266. The rule adopted by the court is, that it will interfere in favour of the subject, and to save the forfeiture, but never to his prejudice. Thus where the jury found that the death was occasioned by the upset of a coach, the property of *P. P. & Co.* the court would not allow the inquisition to be amended by inserting the names of all the proprietors, to enable the crown to enforce the deodand, *R. v. Purcell, Co. & Alc.* 104: and in *R. v. Evett*, 6 *B. & Cr.* 247, when the inquest found the deodand to be the property of *H. Evett, W. Gilbert & Co.*, the court refused to alter the finding, by striking out the words "*& Co.*" assigning as one reason, that the purposes of justice did not make it requisite.

NOTE

As soon as the coroner has finished his charge, the jury retire to consider their verdict. If they are likely to remain long in deliberation, a bailiff is sworn by the coroner to guard the room in which they sit, so that no person may speak with them, and to keep them without meat, drink, or fire, until the verdict be returned, 3 *Bac. Abr.* 269. Should this however, prove ineffectual, they should be adjourned to the next assizes, when they may have the benefit of the opinion and direction of the presiding judge. *Smith's Case, Comb.* 386; *Jerv. Cor.* 229. When they have agreed, they are again brought into court, and if unanimous, the verdict is delivered by the foreman; but if there be a difference of opinion, the coroner collects the voices, beginning from the bottom of the panel, and according to the opinion of the majority, (which, however, must consist of twelve,) the verdict is taken.

Of the verdict.

His next duty is to prepare the inquisition. This is written on parchment and signed, and usually sealed, (though that does not appear to be indispensable,) first by the coroner, and afterwards by all the jurors who concur in the finding. *Jerv. Cor.* 271. If any of them be unable to write, his mark ought to be carefully attested. *R. v. Bowen*, 3 *C. & P.* 602. The names at foot need not be written in full, but in the usual mode of signature, provided they have been written at length, as they ought always to be, in the body of the inquisition. *Id. ibid.*; *R. v. Bennett*, 6 *C. & P.* 179. It is a fatal defect in an inquisition, if the name of a juror appear at foot, which is not mentioned with those in the caption. *R. v. Huggins*, 3 *C. & P.* 414.

Of the inquisition.

The inquisition consists of three parts. 1. *The caption.* This is nearly the same in all inquisitions, and is prefixed as a sort of title or preamble to the finding. It states when and where the inquest has been taken, and by and before what persons, and upon what occasion. 2. *The finding.* This varies with the circumstances of each case. It is in fact the verdict of the jury put into accurate and technical form; and it is that part of the inquisition which requires most skill in the

## NOTE.

party framing it. The usual precedents of indictments for murder or manslaughter, may be easily and at once adapted to corresponding cases of inquisitions, equal accuracy being required in both. *Burn, J. Coroner*, VII. 3. *The attestation.* This is uniformly the same in all inquisitions, whatever may be the verdict.

## Subsequent proceedings.

The inquisition having been duly executed, the jury is discharged. The coroner then usually makes out his warrant for the interment of the body. But if there be danger of infection, or if there be no probability that the deceased is a *felo de se*, the interment need not be deferred until the conclusion of the inquest; and a warrant may be granted as soon as the court has had all the information desirable from inspection. *Burn, J. Coroner*, VII. If the verdict be of that description, that future proceedings will be necessary; as if it charge an individual with manslaughter or with murder, or being accessory thereto, the coroner must bind by recognizance all such persons as know any thing material touching the offence, to appear at the court into which the inquisition is to be returned, to prosecute and give evidence against the party charged. *Umfr.* 188, 9 *Geo.* 4, c. 54, s. 4, *ante* 400. And in such case, it is his duty also to issue his warrant to apprehend the offender, and commit him to prison; or, if he be already in prison, the coroner should issue a detainer to the gaoler. *Burn, J. Coroner*, VII. All the evidence taken before the coroner, and not merely the evidence of the witnesses who may be bound over, ought, where the verdict implicates an individual in felony, to be returned with all reasonable expedition to the office of the clerk of the crown, so as to enable the presiding judge at the assizes, to examine the facts, that he may explain, in his charge to the grand jury, any difficulty which may exist, and state the law as applicable to the facts. *R. v. Fuller*, 7 *C. & P.* 269. And the coroner himself ought also to be present at the assizes. *In re Unwin. Carr. C. L.* 17. His neglect in either particular, is punishable by fine.

## Who may be present.

The court of the coroner, being a court of record, is, generally speaking, open to the public, *Daubney v. Cooper*, 10 *B. & Cr.* 237. But as the ends of public justice or public decency may frequently require it, the coroner has authority, if he see fit, (and of such fitness he is the best and only judge,) to exclude either the public generally, or any individual in particular. *Garnett v. Ferrand*, 6 *B. & Cr.* 611. No person, whether barrister or attorney, has a right to interfere in the proceedings of this court, as by examining witnesses, addressing the court, or the like, without the leave of the court, *Collier v. Hicks*, 2 *B. & Adol.* 663, which is also requisite before its proceedings can be lawfully published. *R. v. Fleet*, 1 *B. & Ald.* 379. Such permission, however, would not sanction the publication of even an impartial statement of the occurrences, if that publication were libellous towards an individual. *Duncan v. Thwaites*, 3 *B. & Cr.* 556; *R. v. Fisher*, 2 *Campb.* 563;

*Flint v. Pike*, 4 B. & Cr. 473; *Saunders v. Mills*, 6 Bing. 213. NOTE.

If the coroner's inquisition, upon being removed into the King's Bench by *certiorari*, should be adjudged by that court to be defective, it may be amended in furtherance of justice, in every point except the finding of the jury, *R. v. Glover*, 1 Sid. 259; *R. v. Shepherd*, 11 Mod. 271; but if defective in that it must be quashed. *R. v. Evett*, 6 B. & Cr. 247. If the defects be apparent on the face of the inquisition, the court will at once set it aside, upon the application of the crown. *In re Culley*, 5 B. & Adol. 230. When there are substantial defects, a new inquiry or *melius inquirendum* will be directed to the coroner, or to the sheriff or special commissioners, if any imputation should rest upon the coroner in relation to the previous inquiry. *R. v. Bunney*, 1 Salk, 190. In no case of second inquest after quashing the first, or *melius inquirendum*, can the body again be disinterred, without the special order of the court of King's Bench on motion. *R. v. Saunders*, Str. 167.

Amendment of the inquisition.

To J. K. one of the Constables of Police  
for the county of S.

FORMS.

(1)

Precept to a constable.

County of S. } By virtue of my office, these are in his  
to wit. } majesty's name to require and command you  
\_\_\_\_\_ } upon sight hereof, to summon twenty-four  
good and lawful men of your county, personally to be and appear before me on the \_\_\_\_\_ day of \_\_\_\_\_, instant, at \_\_\_\_\_ of the clock, in the \_\_\_\_\_ noon, at the house called, &c. (a)  
\_\_\_\_\_ in the parish of \_\_\_\_\_ and in the said county; then and there to inquire of and do all such things as shall be given them in charge, on behalf of our lord the king, touching the death of A. B. (b) And be you then there with this precept to certify what you shall have done in the premises, and further to do what shall then and there be enjoined you. Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

L. M. Coroner. (Seal.)

(a) Here insert some description of the house; as its sign, if it be a public house; or the name of its owner, &c.

(b) If the name of the deceased be not known, say, "a certain person unknown and recently found dead."

## FORMS.

(2)  
Precept to the  
gaoler (a).

To the Governor [or Keeper] of his Majesty's  
Gaol at R. in the county of S.

County of S. } By virtue of my office, these are in his  
to wit. } majesty's name to require and command you,  
\_\_\_\_\_ } upon receipt hereof, to summon or cause to be  
summoned twelve good and lawful men, prisoners within the walls  
of your prison, to be and appear before me at the lodge room of  
the same prison on the \_\_\_\_\_ day of \_\_\_\_\_, instant, at \_\_\_\_\_ of the clock,  
in the \_\_\_\_\_ noon, to inquire of and do all such things as shall be  
given them in charge, touching the death of A. B. late a prisoner  
within the said prison. And have there the names of the persons  
so summoned, with this precept. Herein fail not, as you shall  
answer to the contrary at your peril. Given, &c. (b).

(3)  
Juryman's  
summons.

County of S. } By virtue of the precept of L. M., Esq.  
to wit. } coroner of this county, I hereby require you  
\_\_\_\_\_ } to appear before him as a juryman, on the  
day of \_\_\_\_\_ instant at \_\_\_\_\_ of the  
clock in the \_\_\_\_\_ noon, at the house, &c. (c) then and  
there to inquire on his majesty's behalf, touching the death of  
A. B. (c), and further to do as shall be then and there given you  
in charge, and not to depart without leave. Herein fail not at  
your peril. Dated the \_\_\_\_\_ day of \_\_\_\_\_ 188 .  
To Mr. N. O. of P. [Grocer.]

J. K. Constable.

(4)  
Constable's  
return (d)

The execution of the within precept appears by the panel  
hereunto annexed. So answers J. K. Constable, [or gaoler  
of, &c.]

(5)  
Foreman's  
oath.

You shall diligently inquire, and true presentment make of  
all such matters and things as shall be given you in charge on  
behalf of our lord the king, touching the death of A. B. now  
lying dead, and of whose body you have the view. You shall  
present no man for hatred, malice, or ill will, nor spare any  
through fear, favour, or affection; but a true verdict give,  
according to the evidence. So help you God.

(a) This precept is only to be issued when the deceased has been a prisoner;  
and in such case, the precept to the constable only requires the attendance of  
twelve persons.

(b) This abbreviation will refer the reader generally to the conclusion of  
the first form.

(c) Follow the description in the precept.

(d) This return should be in the handwriting of, or at least signed by, the  
constable or gaoler.

The same oath which your foreman hath taken on his part, you and each of you, on your parts, shall well and truly observe and keep.    So help you God.

FORMS.  
(6)  
Oath of other jurors.

The evidence which you shall give on this inquest touching the death of A. B., shall be the truth, the whole truth, and nothing but the truth.    So help you God.

(7)  
Witness's oath.

County of S. }  
to wit.        }  
\_\_\_\_\_ }  
lying dead in the parish of \_\_\_\_\_ in the said county,  
these are therefore by virtue of my office, in his majesty's name, to charge and command you personally to be and appear before me, at &c., on &c.(a), then and there to give evidence and be examined on his majesty's behalf, before me and my inquest, touching the premises. Herein fail not, at your peril.    Given, &c.

(8)  
Summons of a witness.

L. M. Coroner. (Seal.)

To G. H. of &c. Grocer.

To all Constables, and other Officers of the Peace in the County of S.

(9)  
Warrant against a witness(b).

County of S. }  
to wit.        }  
\_\_\_\_\_ }  
lying dead in the parish of \_\_\_\_\_ in the said county. And  
whereas the said G. H., having been duly summoned to appear and give evidence before me and my inquest, touching the premises, at the time and place in the said summons specified, of which oath hath been duly made before me, hath refused and neglected so to do, to the great hindrance and delay of justice; I do therefore hereby charge and command you or one of you, without delay, to apprehend and bring before me, one of his majesty's coroners for said county, now sitting at the parish last aforesaid by virtue of my said office, the body of the said G. H., that he may be dealt with according to law; and for your so doing this is your warrant.    Given &c.

L. M. Coroner. (Seal.)

(a) Describe accurately the place and time.

(b) This warrant ought not to be issued until after examination on oath of the constable, as to the personal service of the summons, and the witness's refusal to attend.

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**FORMS.**

(10)  
Commitment  
of a witness  
for refusing  
to give evi-  
dence.

To all Constables and other Officers of the Peace in and for the county of S., and also to the Keeper of the Prison at R., in the said county.

County of S. }  
to wit. }

Whereas I heretofore issued my summons under my hand, directed to G. H. requiring his personal attendance before me, then and now one of his majesty's coroners for the said county of S. at the time and place therein mentioned, to give evidence and be examined touching the death of A. B. then and there lying dead; of the personal service of which summons oath hath been made before me. And whereas the said G. H. having failed to appear pursuant to such summons, I thereupon issued my warrant, under my hand and seal, in order that the said G. H. might, by virtue thereof, be apprehended and brought before me to answer the premises. And whereas the said G. H. hath been so apprehended and brought before me sitting as such coroner, and hath been required to give evidence and be examined as aforesaid; yet the said G. H. hath obstinately refused, and still doth refuse so to do, or to give sufficient reason for his refusal. These are therefore, to charge and command you the said constables, or one of you, forthwith to convey the said G. H. to the gaol of R. in the said county, and safely to deliver him to the keeper of such prison there. And these are likewise to require you the said keeper, to receive the said G. H. into your custody, and him safely keep, until he shall consent to give evidence, and be examined before me and my inquest on his majesty's behalf, touching the death of the said A. B. or until he shall be discharged by due course of law. And for your so doing, this is your warrant. Given &c.

L. M. Coroner. (Seal.)

(11)  
Recognizance  
of jurors  
upon an ad-  
journalment.

You acknowledge yourselves severally to owe to our lord the king, the sum of ten pounds, to be levied upon your goods and chattels, lands and tenements, for his majesty's use, upon condition that if you and each of you do personally appear here again on the      day of      , instant, at the hour of      of the clock, in the      noon, to proceed with this inquiry, touching the death of A. B.; then this recognizance to be void, or else to remain in full force. Are you content?

(12)  
Oath of the  
jury bailiff.

You shall keep the jury upon this inquest from meat, drink, and fire, candle-light only excepted. You shall not suffer any person to speak to them, nor shall you speak to them yourself, until they have agreed to their verdict, except to ask them if they have so agreed. So help you God.

County of S. } An inquisition indented, taken for our sove-  
 to wit. } reign lord the king, at the house of &c. (a),  
 \_\_\_\_\_ } situate at &c., in the parish of \_\_\_\_\_ and  
 county of S., on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of  
 the reign of our sovereign lord William the Fourth (b), before  
 L. M. gent., coroner of our lord the king for the said county (c),  
 on view of the body (d) of A. B. (e) then and there lying  
 dead, upon the oath of P. Q., R. S., &c. (f) good and law-

(13)  
 Inquisition.  
 Caption.

(a) The venue and place of holding the inquisition, must appear on the face of it, 2 *Hale*, 166. If no place be stated, or if it do not sufficiently appear that the place stated is within the coroner's jurisdiction, the inquisition will be quashed. 2 *Hawk. c. 25, s. 128*. Where the inquisition was stated to be taken "at C. in the county aforesaid, on &c., before W. S. coroner of the king's liberty of C. aforesaid," it was held sufficient, for it cannot but be intended that C. is within the liberty of C. *Long's Case*, 5 *Co.* 120.

(b) The time must also be correctly stated. If it be stated to have been taken on a Sunday, *Hoyle v. Lord Cornwallis*, *Str.* 387; 7 *Will.* 3, c. 17, s. 7; or on an impossible day, *R. v. Fearnley*, 1 *T. R.* 316; or on two days, 4 *Co.* 48; or if the year be not stated with sufficient certainty, 2 *Hawk. c. 25, s. 127*; the inquisition will be insufficient. But the hour of the day need not be stated, *Burn, J. Coroner VII.*, nor the year of our Lord, in addition to that of the king, 2 *Hawk. c. 25, s. 127*. And "the 26th day June," omitting the word "of" has been held sufficient. *R. v. Huggins*, 3 *C. & P.* 414.

(c) Both the name and style of office must be mentioned, so that the inquisition may appear to have been taken before the proper officer, and that the person named was coroner for the district in which it was taken. Saying that he was coroner *in* the county instead of *for* the county has been held sufficient. 2 *Hawk. c. 25, s. 119*.

(d) It must be stated to have been taken on view of the body, for the coroner has no jurisdiction to take an inquisition otherwise. *R. v. Ferrand*, 3 *B. & Ald.* 260. And no one can take an inquest on view of the body but the coroner. 2 *Hawk. c. 9, s. 23*.

(e) If the name of the deceased be not known, say, "of a certain person to the jurors unknown;" but if known, it should be accurately stated. *R. v. Walker*, 3 *Campb.* 264; *R. v. Robinson*, *Holt, N. P. C.* 595. Care should be taken not to attribute a name to the deceased, unless he have acquired it either by baptism or reputation. *R. v. Clark*, *Russ. & Ry.* 358; *R. v. Smith*, 6 *C. & P.* 151.

(f) It must appear that the inquest was had upon the oaths of the jurors. The names of the jurors ought also to be accurately set out at length, so that it may appear on comparison with the names signed, that twelve persons actually concurred in the finding. 2 *Hawk. c. 25, s. 126*. It is not sufficient to say that it was taken upon the oaths of the persons under written. *R. v. Evatt*, 6 *B. & Co.* 247; *R. v. Bowen*, 3 *C. & P.* 602. All the persons sworn on the inquest need not be named; but only those who concur in the finding, which must be twelve at least.



## FORMS.

Finding of  
felo de se.

ful men (a) of the said county duly chosen, and who being then and there duly sworn, and charged (b) to inquire for our said lord the king, when, how, and by what means the said A. B. came to his death, do, upon their oaths say (c)\*, that the said A. B. on the                      day of                      in the year aforesaid, with force and arms, at the parish aforesaid, in and upon himself, in the peace of God and of our said lord the king (d), then and there being, feloniously, wilfully, and of his malice aforethought (e), did make an assault, and that the said A. B. a certain handkerchief of the value of one shilling (f), about the neck of him the said A. B. then and there did tie and fasten, and that the said A. B., with the handkerchief aforesaid, then and there did suffocate and strangle himself, of which suffocation and strangling he the said A. B., then and there instantly died (g). And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B., in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought (h), did kill and murder himself, against the peace of our said lord the king, his crown and dignity. In witness whereof, as well the said coroner, as the jurors aforesaid, have hereunto set and subscribed their hands and seals the day and year first above written.

Attestation.

L. M. Coroner. (Seal.) P. Q. (Seal.)  
R. S. (Seal.)  
&c. [Jurors.]

(a) These words do not appear necessary, as all men will be presumed good and lawful until the reverse appears. 2 Hawk. c. 25, ss. 17, 126.

(b) The words "and charged" do not appear necessary, if it have been stated that the jurors were "duly sworn," for the one is implied in the other. 2 Hawk. c. 27, s. 126.

(c) In stating the cause of death great accuracy and precision are required. The general rules upon this subject are the same as those which apply to indictments, and the practitioner is referred therefore, to the several precedents of indictments for murder and manslaughter. 3 Ch. C. L. 750, 1st ed.; Arch. Pl. & Ev. 314, 335, 5th ed. These will serve as sure guides where they may be found applicable to the circumstances.

(d) If the cause of death have occurred in the reign of a former king, say "our lord the late king [George the Fourth.]"

(e) These terms are essentially necessary, and especially the term "feloniously," which cannot be supplied by any circumlocution. *Dawling's Case*, Cro. El. 193.

(f) Or say "a certain rope of no value" &c., according to the fact. It ought always to be stated whether the instrument of death is of any and what value. This is necessary with a view to the deodand. *R. v. The Coroner of London*, Jerv. Cor. Add. 408.

(g) If the death did not happen on the same day that the wound was given, or the cause of death applied, then this statement may be altered as in form 16, post 422, at †.

(h) If the names have been written in full in the body of the inquisition,

*For caption, see p. 419, down to \* and then proceed.]* That **FORMS.**  
 C. D. of the parish of M. in the county of N. labourer(a), on **(14)**  
 the day of , in the year aforesaid, with force and **Finding of**  
 arms, at the parish of , aforesaid, in and upon the **murder by**  
 said A. B. feloniously, wilfully, and of his malice afore- **shooting.**  
 thought(b), did make an assault, and with a certain pistol of  
 the value of five shillings, then and there charged with gun-  
 powder and leaden slugs, which said pistol the said C. D. in  
 his right hand then and there held, then and there, to, upon,  
 and against the said A. B. did shoot and discharge, and with  
 the said slugs, out of the said pistol, by force of the said gun-  
 powder, then and there shot and sent forth as aforesaid, the  
 said A. B., on the left side of the belly(c), then and there did  
 strike, penetrate, and wound, giving to the said A. B. then and  
 there with the leaden slugs aforesaid, so shot and sent forth as  
 aforesaid, in and upon the left side of the belly of him the said  
 A. B., one mortal wound, of which said mortal wound the said  
 A. B. then and there instantly died. And so the jurors aforesaid,  
 upon their oath aforesaid, say that the said C. D., him the said  
 A. B., in manner and form aforesaid, feloniously, wilfully, and  
 of his malice aforethought, did kill and murder, against the  
 peace of our said lord the king, his crown and dignity. And **Finding as to**  
 the said jurors further say, upon their oath aforesaid, that E. F. **accessories.**  
 of &c., yeoman, before the said felony and murder was com-  
 mitted in manner and form aforesaid, to wit, on &c.(d), in the  
 year aforesaid, at the parish aforesaid, did feloniously and  
 maliciously incite, procure, aid, counsel, and command the  
 said C. D., the said felony and murder in manner and form

the jurors may here adopt their usual mode of signature. *R. v. Bennett*, 6 C. & P. 179. If any of the jurors be marksmen, their marks must be verified by an attestation. *R. v. Bowen*, 3 C. & P. 602.

(a) See note (c) *ante* 419; and generally, the notes to that precedent may be of material assistance in other cases.

(b) If the imputed offence should amount not to murder, but manslaughter only, then omit the words "wilfully and of his malice aforethought," and also the word "murder" where it occurs. As to the distinction between these two offences, and what is requisite to constitute each, see *ante* , &c. *Arch. Pl. & Ev.* 320, 5th ed. It should also be borne in mind that in manslaughter there can be no accessories, and therefore, so much of the form as relates to them ought, in such a case to be omitted; but to warrant the jury in coming to that conclusion, mitigatory circumstances ought to appear in evidence, as the law presumes every homicide to be murder, until the contrary appears. *Post.* 255.

(c) The situation of the wound need not be stated more particularly. 4 Co. 416. It is mentioned, in order that it may appear to the court that a mortal wound has been given.

(d) Insert here some day previous to the offence. Being laid under a *vide, licet*, it is not necessary that it should be the true day.

**FORMS.** in the said parish, that I with my inquest may have a view thereof, and proceed therein according to law. Given &c.  
L. M. Coroner. (*Seal*)

(22)  
Warrant to  
arrest a per-  
son accused  
by coroner's  
inquisition.

To all Constables and other Officers of the Peace in and for the county of S.

County of S. }  
to wit. } Whereas by an inquisition taken before me,  
\_\_\_\_\_ } one of his majesty's coroners for said county,  
on &c., at the parish of R. in said county, on  
view of the body of A. B. then and there lying dead, one C. D. late of &c., stands charged with the wilful murder of the said A. B. \*These are therefore, to charge and command you and every of you, without delay to apprehend and bring before me, or one of his majesty's justices of the peace of the said county, the body of the said C. D. of whom you shall have notice, that he may be dealt with according to law. Given &c.

L. M. Coroner. (*Seal*)

(23)  
Warrant of  
commitment  
thereon.

To all Constables and other Officers of the Peace in and for the County of S., and to the Keeper of his Majesty's Gaol at R.

*Commencement as in last form to \**] These are therefore, to charge and command you or any of you, forthwith safely to convey the body of the said C. D. to his majesty's gaol of R. and safely to deliver the same to the keeper of the said gaol. And these are likewise to require you the said keeper, to receive the body of the said C. D. into your custody, and him safely keep in the said gaol, until discharged by due course of law. Given &c.

L. M. Coroner. (*Seal*)

## CHAPTER VIII.

### OF THE COURT OF PETTY SESSIONS.

7 & 8 Geo. 4, c. 67(a), s. 11(b).—That a registry or record in writing shall be kept by each and every clerk of the petty sessions, of all acts or orders and proceedings done at such petty sessions, whether in civil or criminal cases, in the manner and form set forth in the schedule to this act annexed(c); such registry or record to be signed, on each day upon which such petty sessions shall be holden, by all the justices present; and that no summons, warrant, conviction, committal, information, recognizance, or any other magisterial act or order of any kind, be issued or signed at such petty sessions, without the making an entry thereof in the said record or registry.

A registry to be kept of all proceedings at petty sessions.

13. That in all cases in which it becomes necessary for a single justice to act magisterially, not being in petty sessions, save and except in the issue of summonses, such magistrates do report such case, together with the informations taken, or

Entry to be made at petty sessions of all cases in which a single justice acts.

(a) Entitled "*An act for the better administration of justice at the holding of petty sessions by justices of the peace in Ireland.*"

(b) The first six sections of this act relate to the fixing and alteration of petty sessions' districts; the 7th and 8th, to the providing a court-house and clerk to the justices; and the 9th and 10th, to the appropriation of fees, and the affixing a table thereof in the court-house.

(c) The following is a copy of the schedule so far as regards criminal proceedings:—

"Registry of proceedings in criminal matters at petty sessions held for the county of \_\_\_\_\_ at \_\_\_\_\_."

| No. | Date of Information. | Informant's Name. | Offence. | Persons charged, Name, and Residence. | Witnesses sworn. | Determination. |
|-----|----------------------|-------------------|----------|---------------------------------------|------------------|----------------|
|     |                      |                   |          |                                       |                  |                |

7 & 8 G. 4,  
c. 67.

recognizances sworn and acknowledged, to the petty sessions then next ensuing, to be holden for the district in which such case had arisen; and that a particular entry be made in the registry of such petty sessions, of every such case.

14. [*Clerks of the crown and peace shall lay a list of informations and recognizances taken before single justices, and the names of such justices, before the judges of assize and justice at sessions.*]

All blanks in warrants, &c. shall be filled before signing.

15. [*That every warrant, information, conviction, committal, recognizance, or order of the justices at petty sessions, shall be signed by two justices at least, and not by any one person as chairman, and on the behalf of others;*] and that no summons, warrant, or order, be signed by any justice or justices of the peace, unless the blanks in the same shall have been first duly filled up.

Informations, &c. taken by single justices shall be transmitted to petty sessions.

16. [*Justices at petty sessions may proceed with any case which they have jurisdiction, although the summons may have been issued, and complaint received by any other single justice, or justices at petty sessions.*]

6 & 7 Will. 4, c. 34(a), s. 5.—That from and after the passing of this act, every information, examination, and recognizance sworn, taken, or acknowledged by or before any justice or justices not sitting in petty sessions, shall with all convenient despatch, and at the latest before the petty sessions then next ensuing for the district where the case may have arisen, be transmitted to the clerk of petty sessions of such district, and shall be by him laid before the bench of justices, at the next petty sessions after he shall have received such informations, examinations, and recognizances; and every petty sessions clerk shall keep a distinct and separate list of the informations, examinations, and recognizances so transmitted to him, containing the subject matter thereof, the dates of the taking or acknowledging the same, and the dates of the receipt of the same by him respectively; and shall every three months transmit a copy of such list to the chief secretary to the lord lieutenant, along with the quarterly return of the proceedings at petty sessions.


Informations &c. to be transmitted by petty sessions clerk in 14 days from committal or bailment.

6. That from and after the passing of this act, every information, examination, and recognizance sworn, taken, or acknowledged at any petty sessions in Ireland shall be transmitted by the magistrates at such sessions, or the clerk of such petty sessions, to the clerk of the crown of the county, county of a city, or county of a town in which such sessions are holden, if the same shall relate to any matter to be tried or inquired into at the assizes, and if to any

(a) Entitled, "An act to amend an act passed in the seventh and eighth years of the reign of his majesty king George the Fourth, for the better administration of justice at the holding of petty sessions by justices of the peace in Ireland."

matter to be tried or inquired into at the quarter sessions, then to the clerk of the peace of such county, city, or town, fourteen days at the latest from the date of the committal for trial, or of the bailment of the party or parties accused by or in such informations, or of the taking of such recognizance, as the case may be, together with all such informations, examinations, and recognizances, taken by or before a justice or justices not sitting in petty sessions as may then be in the hands of such petty sessions clerk, any thing in the said recited act(a) or in an act made in [9 Geo. 4, c. 54.] to the contrary thereof notwithstanding; and the clerk of the petty sessions shall on every such information and recognizance indorse the true date of its being so transmitted, and shall, on the day before the day for holding each petty sessions, enter in the book containing an entry of the proceedings at the petty sessions, an account in writing stating the particulars of the informations so transmitted by him since the last sitting of such petty sessions, and to whom transmitted, and shall sign such account; and if any clerk of petty sessions shall omit or neglect to transmit any such examination, information, or recognizance to the officer to whom it ought to be transmitted within the time aforesaid, or to enter or sign such account as aforesaid, he shall forfeit for every such omission or neglect a sum of five pounds, to be recovered by civil bill, before the assistant barrister of the county, by any person who will sue for the same.

6 & 7 W. 4,  
c. 34.



7. [*Recites 7 & 8 Geo. 4, c. 67, s. 15, requiring warrants &c. issued at petty sessions to be signed by two justices; and that inconvenient adjournments were occasioned thereby, although one justice may have been legally competent to act.*] For remedy whereof in such cases, be it therefore enacted, that in all cases in which by law any warrant, conviction, committal, or order may be made, or if that act had not been passed, might have been made by, or any information or recognizance taken before, one justice of the peace alone, it shall and may be lawful to and for any one justice of the peace attending alone at the time and place fixed for holding any petty sessions, to proceed in open court, notwithstanding the absence of any other justice or justices, to hear, determine, and dispose of all complaints, informations, matters, and things whatsoever then ready to be heard, determined, and disposed of at such petty sessions, which one justice of the peace is or may be by law competent to hear, determine, or dispose of, or which might have been heard, determined, or disposed of by one justice if that act had not passed, and to sign any warrant, conviction, order, or committal, and to take any information or recognizance, upon or relating to every suit, complaint, information, matter, or thing which by law one justice sitting alone is or may be em-

A single justice may act at petty sessions in certain cases.

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(a) Viz. 7 & 8 Geo. 4, c. 67.

6 & 7 W. 4, c. 34. powered to sign or take, or could have signed or taken, if that act had not been passed.

11. [*The clerks of the crown and peace shall keep an office open in their assize town each day from twelve till three o'clock, or forfeit £5, and be fined by the judge of assize not exceeding £10.*]

12. [*The fee to petty sessions clerks for engrossing any number of informations relating to the same transaction shall not exceed 2s. ; and no fee demandable for preparing any recognizance, unless required so to do.*]

NOTE.  
Of petty sessions.

A petty sessions is a meeting of justices, holden of their own mere motion, for the execution of the powers vested in them by law. *Burn. J. Sessions, Petty & Special*. It differs from a general sessions of the peace in this ; that, at the latter, every justice of the county ought to have an opportunity afforded him of being present at and participating in the proceedings. This is done by having the times of holding such sessions fixed and declared by act of parliament and public advertisement. The general sessions also have jurisdiction to hear and determine offences upon indictments : and, for the purpose of assisting the justices in such cases, and for the hearing of civil bills, the assistant barrister is in constant attendance there. 36 Geo. 3, c. 25, s. 2. *ante* 390. Justices at petty sessions may do every thing which by law one or two justices are authorized to do, when not sitting in general sessions ; and accordingly, every thing said in the following chapter as to the authority of one or two justices will equally apply to the court of petty sessions. The time, place, and manner of holding petty sessions are regulated altogether by the discretion of the attending justices, subject however, to the acts of parliament 7 & 8 Geo. 4, c. 67, and 6 & 7 Will. 4, c. 34, above cited. Although a petty sessions comes literally within the definition of the term "court," which we have already given, *ante* 367, yet when that word occurs in a statute it will not be held to include the petty sessions ; neither will the term "court of record" include a general sessions of the peace. *Gregory's case*, 6 Co. 19. *Burn J. "Justices of the Peace,"* IV.

## CHAPTER IX.

### OF THE AUTHORITY AND PRIVILEGES OF JUSTICES OF THE PEACE.

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1 *Edw. 3, St. 2, c. 16. Eng.* Item, for the better keeping and maintenance of the peace, the king will, that in every county good men and lawful, which be no maintainers of evil, or barrators in the county, shall be assigned to keep the peace. Proper persons shall be assigned as justices.

13 *Rich. 2, c. 7, Eng.—(pars.)* That justices of peace shall be made of new in all the counties of England, of the most sufficient knights, esquires, and gentlemen of the law of the said counties. And that the said justices be sworn duly without favour to keep and put in execution all the statutes and ordinances touching their offices. Justices shall be appointed and sworn.

2 *Hen. 5, stat. 2, c. 1, Eng.—(pars.)* That the justices of the peace from henceforth to be made within the counties of England, shall be made of the most sufficient persons dwelling in the same counties, by the advice of the chancellor (a) and of the king's council, without taking other persons dwelling in foreign counties to execute such office, except the lords and the justices of assizes now named and to be named by the king and his council. Justices shall be of the most sufficient persons in the counties.

11 *Hen. 6, c. 11, s. 1, Eng.* [No person shall be made a county justice, unless he have lands or tenements to the value of £20 by the year. If he have not, he shall give notice thereof to the chancellor, or if he fail to do so for one month, or act as a justice, he shall forfeit £20, and be put out of the commission.]

2. [Provided, that this ordinance shall not extend to cities, towns, or boroughs, being counties of themselves, nor to counties at large where there are not sufficient persons having the above qualification.]

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(a) The power of the chancellor extends only to putting the justices in commission. He has no right afterwards to punish them for misbehaviour. The redress is, to move the King's Bench for an information; and the complainants may apply to Chancery to turn them out of the commission. *Ex parte Rook, 2 Atk. 2.*



## *Of Justices of the Peace, &c.*

[P. 1.]

1. 10 & 11 Car. 1, c. 10 (a). [*That all process of the peace or good behaviour to be awarded out of Chancery or the King's Bench shall be void, unless granted upon motion in court grounded upon affidavit of the cause; and unless the making of such affidavit and motion be indorsed on the writ. If the affidavit should prove untrue, the court may award costs and damages to the party grieved; and the offender shall be committed to prison until such be paid.*]

7 Will. 3, c. 13, s. 3. [*No person, being sheriff or sub-sheriff of any county, shall act as a justice of the same county, during the time he shall so be sheriff or sub-sheriff. And all acts so done as a justice by such sheriff or sub-sheriff shall be void; and he shall forfeit £20.*]

45 Geo. 3, c. 141 (b), s. 1. [*In all actions brought against any justice of the peace, on account of any conviction made under any act of parliament, for any thing done or commanded by such justice "for the levying any penalty, apprehending any party, or for or about the carrying of any such conviction into effect," in case the same shall be quashed, the plaintiff, besides the amount of the penalty actually levied, shall not recover more than two pence damages, nor any costs, unless laid in the declaration (which shall be in case only) "that such acts were done maliciously and without any reasonable and probable cause."*]

2. [*That the plaintiff shall not recover any penalty levied, costs, or damages, if the justice shall prove at the trial that he was guilty of the offence for which he suffered, "and that he had undergone no greater punishment than was assigned by law to such offence." (c)*]

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(a) It was formerly the usual practice for turbulent persons, when they feared they should be obliged to find heavy sureties for the peace or good behaviour before a justice of the peace, to cause process to issue against themselves out of Chancery or the King's Bench, upon the application of some person in collusion with them, that they might be there bound over in some trifling amount, and then to purchase a writ testifying the same, which operated as a super-seas of all similar proceedings against them before any inferior tribunal. This abuse led to the enactment of this statute, and the corresponding one in England, 21 Jac. 1, c. 8—1 Hawk. c. 60, s. 14.

(b) Entitled, "*An Act to render Justices of the Peace more safe in the execution of their duty.*"

(c) This statute gives no protection to magistrates except where there has in fact been a conviction, *Massey v. Johnson*, 12 East 67; and where that conviction has been quashed, *Gray v. Cookson*, 16 East 13; *Mellor v. Biddely*, 6 C. & P. 374. If it have not been quashed, the magistrate cannot go into evidence to shew that the party was guilty of the offence imputed; but it seems doubtful whether such evidence is not admissible in mitigation of damages, *Rogers v. Jones*, 3 B. & Cr. 409.

43 Geo. 3, c. 143 (a), s. 1. [*Recites the necessity of protecting the magistracy of Ireland against vexatious suits.*] That from and after the first day of August, (1803,) no writ shall be sued out against, nor any copy of any process at the suit of a subject shall be served on, any justice of the peace, or governor, or deputy governor of any county or place in Ireland, for any thing by him done in the execution of his office, until notice in writing of such intended writ or process shall have been delivered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue out or serve, or cause the same to be sued out or served, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party hath or claimeth to have against such justice of the peace, or governor, or deputy governor respectively; on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall be entitled to have the fee of twenty shillings for the preparing and serving such notice, and no more.

43 G. 3, c. 143

No action shall be brought against any justice &c., for anything done in execution of his office, until after one month's notice given.

2. [*Amends may be tendered; and, if refused, may be afterwards pleaded in bar. If the jury think the tender sufficient, a verdict shall be found for the defendant.*]

3. [*The plaintiff shall not recover, unless it be proved that a notice was given.*]

4. [*If compensation have not been previously tendered, it may be paid into court, any time before issue joined.*]

5. [*No evidence shall be given of any cause of action, which is not expressed in the notice.*]

6. That from and after the said first day of August, no action shall be brought against any constable or other officer in Ireland, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand, or hand and seal of any justice of the peace, or governor, or deputy governor of any county or place in Ireland, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case, after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such

No action against constables &c., for anything done under warrant of a justice &c., unless inspection of warrant refused for six days.

Defendant to have a verdict, notwithstanding any defect of jurisdiction.

(a) Entitled, "*An Act for the rendering Justices of the Peace, and Governors, and Deputy Governors of counties and places in Ireland, more safe in the execution of their office; and for indemnifying Constables and others acting in obedience to the warrants of such Justices of the Peace, Governors, and Deputy Governors respectively.*"

43 G. 3, c. 143.

Proceedings  
in action  
against con-  
stable and  
justice,  
jointly.

constable or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the justice or justices, or governors or deputy governors respectively, who signed or sealed the said warrant, defendant or defendants therein, on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices, or governors or deputy governors respectively; and if such action be brought jointly against such justice or justices, or governors or deputy governors respectively, and also against such constable or other officer or person acting in his or their aid as aforesaid, then, on proof of such warrant, the jury shall find for such constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid: and if the verdict shall be given against such justice or justices, or governors, or deputy governors respectively; in such case, the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such verdict shall be found as aforesaid. Provided always, that where the plaintiff in any such action against any such justice of the peace, or governor, or deputy governor respectively, shall obtain a verdict, in case the judge, before whom the cause shall be tried, shall, in open court, certify on the back of the record that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

7. [*Actions against a justice, governor, or deputy governor, for anything done in execution of his office, or against a constable acting as aforesaid, shall be brought within six calendar months after the act complained of*]

Justices of the  
peace may act  
for adjoining  
counties, if  
resident in  
one of them.

59 Geo. 3, c. 92, s. 1.—Whereas the administration of justice in Ireland is frequently obstructed for want of resident justices of the peace, and might be much furthered, in case the justices acting for two or more adjoining counties were enabled to act for the same, if personally present in either of those in which they act, as they are by law enabled to do in Great Britain; be it therefore &c., that from and after the passing of this act, it shall and may be lawful for any justice or justices of the peace acting as such for any two or more counties in Ireland, being adjoining counties in Ireland, to act as a justice or justices of the peace in all matters and things whatsoever concerning or in anywise relating to any or either of the said counties; and that all and every act and acts of such justice or justices of the peace, and the act and acts of any constable or other officer in obedience thereto, shall be as valid, good, and effectual in the law, to all intents and purposes whatsoever, as if such act or acts of the said justice or justices had been done in the county

or counties to which such act or acts more particularly relate; and all constables and other officers of the said county or counties to which such act or acts relate, are hereby authorised and required to obey the warrants, orders, directions, act, and acts of such justice or justices, so granted, given, and done, and to do and perform their several offices and duties, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty. Provided always, that such justice or justices be personally resident in one of the said counties, at the time of doing such act or acts. Provided also, that the warrants, orders, or directions so to be given and granted, be directed and given in the first instance to the constable or other officer of the county, to which the same more particularly relate.

59 G. 3, c. 92.

2. That from and after the passing of this act, it shall and may be lawful for any constable or other peace officer in Ireland, or for any other person or persons apprehending or taking into custody any person or persons offending against law, and whom they lawfully may and ought to apprehend and take into custody, by virtue of his or their office or offices, or otherwise howsoever, to convey and take the person or persons so apprehended or taken into custody as aforesaid, to any justice or justices of the peace acting for the said county, and present in such adjoining county as aforesaid; and the said constables and other peace officers, and all and every other person or persons are hereby authorised, empowered, and required, in all such cases, so to act in all things as if the said justice or justices of the peace was or were resident within the said county to which they respectively belong: and all and every person or persons obstructing or hindering the said constables or other peace officers in the execution of their respective offices in the said county or counties adjoining as aforesaid, shall be and are hereby made liable to the same pains and penalties for such obstruction and hindrance of the said officers in the execution of their respective offices, as if the same had been committed in the county for which the said constables or other peace officers were appointed to act.

Constables &c., may carry offenders before such justices, and shall act, and be protected, as if such justices resided within the county.

4. That from and after the passing of this act, it shall and may be lawful for any justice or justices of the peace acting for any county at large in Ireland, to act as such at any place within any city or town, being a county of itself, and situate within, surrounded by, or adjoining to any such county at large; and that all and every such act and acts, matters and things, done by such justice or justices of the peace for the said county at large, within such city or town, shall be as valid and effectual in the law, as if the same had been done within the said county at large, to all intents and purposes whatsoever: provided always, that nothing in this act contained shall extend to give power to the justices of the peace for any county at large, not being justices for such city or town, or any constable or other officer acting under them, to act or intermeddle in any

Justices for a county at large may act as such, though in an adjoining county of a city or town.

59 G. 3, c. 92, matters or things arising within any such city or town, in any manner whatsoever.

Where tumult or felony has taken place, or is apprehended, justices may appoint special constables,

2 & 3 Will. 4, c. 108 (a). Whereas it is expedient to amend the laws in Ireland relative to the appointment of special constables, and to make other provisions for the better preservation of the public peace in that part of the united kingdom: be it &c., that in all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, county of a city, county of a town, or place in Ireland, upon the oath of any credible witness, that any tumult, affray, riot, or felony has taken place, or may be reasonably apprehended in any parish, townland, or place situate within the jurisdiction of such justices, and such justices shall be of opinion that the ordinary police, or constabulary, or other force, or officers of justice constituted and established therein, are not sufficient for the preservation of the peace, and for the protection of the inhabitants, and the security of the property in any such place as aforesaid; then and in every such case, such justices are hereby authorized to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable), residing in such parish, townland, or place as aforesaid, or the neighbourhood thereof, to act as special constables for such time and in such manner as to the said justices respectively shall seem fit and necessary, for the preservation of the public peace, and for the protection of the inhabitants, and the security of the property in such parish, townland, or place; and the justices of the peace who shall appoint any special constables by virtue of this act, or any of them, or any other justice of the peace acting for the same limits, are and is hereby authorized to administer to every person so appointed the following oath; (that is to say)

who shall take the following oath.

I, A. B. do swear, that I will well and truly serve our sovereign lord the king in the office of special constable for the parish [or townland or district] of \_\_\_\_\_ without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of his majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof, faithfully according to law.—So help me God.

Notice there-  
of to be given  
to the lord  
lieutenant.

Provided always, that whenever it shall be deemed necessary to nominate and appoint such special constables as aforesaid, notice of such nomination and appointment, and of the circumstances which have rendered such nomination and appointment expedient, shall be forthwith transmitted by the justices

(a) Entitled, "*An Act for amending the laws in Ireland relative to the appointment of special constables, and for the better preservation of the peace.*"

making such nomination and appointment, to the lord lieutenant, or other chief governor or governors of Ireland, and to the lieutenant of the county or place. 2 & 3 W. 4, c. 108.

2. That in any case in which any number of the householders or other persons not legally exempt from serving the office of constable, shall have been appointed by the justices in manner aforesaid, to act as special constables for any parish, townland, or place as aforesaid, it shall be lawful for the lord lieutenant, or other chief governor or governors of Ireland, on the representation of any two justices of the peace, to order that the persons exempt by law from serving as special constables in such parish, townland, or place, or the neighbourhood thereof, shall, notwithstanding such exemption, be appointed and sworn in to act as special constables, as if they were not by law exempt; and such persons shall accordingly be appointed and sworn in manner aforesaid, and shall be liable to act for two calendar months only.

Persons legally exempt, may be ordered to act as special constables.

3. That it shall be lawful for the lord lieutenant, or other chief governor or governors of Ireland, to give direction to the lieutenant of any county or place, to nominate and appoint, and to cause to be sworn, special constables throughout the whole of such county or place, or any portion thereof, of whatever size or denomination, and to signify, if he or they shall see fit, that no person shall be excused from being so appointed and sworn in, by reason of any exemption: provided always, that the persons so appointed and sworn in, whether having cause of exemption or not, shall only be called upon to act for three calendar months.

Lord lieutenant may order special constables to be appointed, though legally exempt.

4. That the justices of the peace, who shall have appointed any special constables under this act, or any two of them, or the justices acting within the limits wherein such special constables shall have been called out, at a special session of such last mentioned justices, or the major part of such last mentioned justices at such special session, shall have power to make such orders and regulations, as may from time to time be necessary and expedient for rendering such special constables more efficient for the preservation of the public peace, and shall also have power to remove any such special constable from his office for any misconduct or neglect of duty therein.

Justices may make regulations.

5. That every special constable appointed under this act, shall, not only within the parish, townland, or place for which he shall have been appointed, but also throughout the entire jurisdiction of the justices so appointing him, have, exercise, and enjoy all such powers, authorities, rights, privileges, advantages, and immunities, and be liable to all such duties and responsibilities, as any constable duly appointed, now has within his constablewick, by virtue of the common law of this realm, or of any statute or statutes.

Special constable shall have all the powers of a constable.

6. That where any special constables appointed under this act shall be serving within any county, and two or more justices

Special constables may be ordered to act.

1 & 3 W. 4, c.  
108.

in adjoining  
counties.

of the peace of any adjoining county, shall make it appear to the satisfaction of any two or more justices of the peace acting for the limits wherein such special constables are serving, that any extraordinary circumstances exist, which would render it expedient that such special constables should act in such adjoining county; then and in every such case, the said last mentioned justices are hereby authorized, (if they shall think fit,) to order all or any of the said special constables to act in such adjoining county, in such manner as to the said last-mentioned justices shall seem meet; and every such special constable, during the time that he shall so act in such adjoining county, shall have, exercise, and enjoy all such powers, authorities, rights, privileges, advantages, and immunities, and be liable to all such duties and responsibilities, as if he were acting within the parish, townland, or place for which he was originally appointed.

7. [*Persons appointed special constables, and refusing to take the oath, when required by any two justices acting within the same limits, shall be liable on conviction to a penalty not exceeding five pounds. A similar penalty is provided, in case he shall refuse to attend when summoned to take the oath, unless prevented by sickness.*]

8. [*Special constables refusing to serve, or obey orders, liable to a penalty not exceeding five pounds, unless prevented by sickness or other sufficient excuse.*]

9. [*The justices at a special session may suspend or determine the service of special constables; and shall notify such to the chief or under secretary, and also to the lieutenant of the county.*]

10. [*Every special constable shall, within one week after his ceasing to exercise his office, deliver to his successor, or to such person as any justice of the limits may appoint, every weapon and other article provided for him; or forfeit a sum not exceeding two pounds.*]

12 & 13. [*The expenses of special constables shall be paid by order on the county treasurer. And the grand jury shall reimburse him by presentment.*]

14. [*Justices may adjourn any special session. And every such session shall be taken to be legally holden until the contrary be proved.*]

constables to  
attend magis-  
trates, and  
execute their  
warrants.

6 & 7 Will. 4, c. 13 (a), s. 15. That every chief constable, head constable, constable, and sub-constable, to be appointed under this act, shall, when not engaged on actual duty, attend on the justices of the peace at their several general or quarter sessions, and also at their petty sessions which shall be held at the respective places where such chief or other constable or sub-constable may be stationed, and shall obey and execute all the lawful warrants, orders, and commands of such justices at such

essions, in all cases, civil and criminal. Provided always, 2 & 3 W. 4, c. 108. that no chief or other constable, or sub-constable shall be employed under such authority, to levy tithes or tithe composition, or to levy rents by distress, or to levy fines or penalties under any act or acts relating to the revenue in Ireland, nor to enforce any acts relating to the laws for the preservation of game or fish, except only in cases where forcible resistance shall have been actually made, and proved by information taken on oath.

Not to be employed in tithe, revenue, or game law cases.

16. That, except as aforesaid, every chief constable, head constable, constable, and sub-constable appointed under this act, shall, within his jurisdiction, execute all processes to him directed for levying the amount of any fine or fines which shall be imposed under any act in force in Ireland, or for levying the amount of any recognizance forfeited to his majesty, his heirs and successors, or of any fines imposed on any jurors, witnesses, parties, or persons, at any assizes or commission of oyer and terminer, or gaol delivery, or sessions of the peace. And when any warrant, order, or command of any magistrate shall be delivered or given to any such head constable or sub-constable, he shall, if the time will permit, show or deliver the same to the chief constable under whose immediate command such head constable or sub-constable shall then be, and such chief constable shall nominate and appoint, by indorsement thereon, such one or more of the constables under his orders, and such assistant or assistants to him or them, as such chief constable shall think proper to execute such warrant, order, or command. And every such constable whose name shall be indorsed, and every such assistant as aforesaid, shall have all and every the same rights, powers, and authorities, for and in the execution of every such warrant, order, or command, as if the same had been originally directed to him or them expressly by name.

Constables to execute all processes to them directed.

Chief constables shall indorse on warrants the constables who shall execute them

19. That if any chief or other constable, or sub-constable, shall neglect or refuse to obey and execute any warrant hereby directed to be by him executed, or shall be guilty of any neglect or violation of duty in his office; every such chief or other constable shall forfeit and incur such penalty, not exceeding five pounds, as any two or more justices of the peace, after examination upon oath of one or more credible witness or witnesses, or upon confession of the party, shall think proper to impose or inflict; and the amount of such penalty shall and may be deducted from and out of any salary accruing due to such offender under this act, upon a certificate thereof, to be by the justices, before whom he may be convicted, transmitted to the paymaster of the county. Provided always, that it shall be lawful for the lord lieutenant, or other chief governor or governors, to mitigate or remit any such penalty.

Penalty on constables for breach of duty.

31. [In cases of disturbance, nonresidence, or other sufficient cause, the lord lieutenant may by warrant appoint one or more persons to be justices for any county, county of a city, or county of a town, or district thereof; and such magistrule, upon taking



6 & 7 W. 4, c. 13. *the oaths by law required, shall be to all intents and purposes, a justice for such district.]*

Constable &c,  
not liable to  
serve on  
Juries &c.

23. That no inspector-general, deputy inspector, receiver, paymaster, county inspector, sub-inspector, chief or other constable, or sub-constable, appointed and acting under this act, shall be liable to serve the office of churchwarden, parish overseer, or constable, or to serve as a juror in any case, civil or criminal, or to be chosen or balloted to serve in the militia, or subject to any fine, penalty, or punishment whatsoever, for declining or refusing to serve in any such capacity.

Reputation to  
be evidence  
of appoint-  
ments.

44. That if any question shall arise as to the right of any magistrate, or of any inspector, sub-inspector, chief constable, or head constable, or sub-constable, to hold or execute any such office respectively, common reputation shall, to all intents and purposes, be deemed and held to be sufficient evidence of such right; and it shall not be necessary to produce any appointment, or any oath, affidavit, or other document, or matter whatsoever, in proof of such right.

Constables  
shall not be  
responsible  
for the regu-  
larity of  
warrants.

50. Provided always, and be it enacted, that when any action shall be brought against any constable for any act done in obedience to the warrant of any magistrate, such constable shall not be responsible for any irregularity in the issuing of such warrant, or for any want of jurisdiction in the magistrate issuing the same. And such constable may plead the general issue, and give such warrant in evidence. And upon producing such warrant, and proving that the signature thereto is the handwriting of the person whose name shall appear subscribed thereto, and that such person is reputed to be, and acts as a magistrate of such county or district, as the case may be, and that the act or acts complained of, were done in obedience to such warrant; the jury who shall try the said issue, shall find a verdict for such constable, and such constable shall recover his costs of suit.

6 & 7 Will. 4, c. 29 (a), s. 1. [*The lord lieutenant may establish a new police in Dublin; and may, by warrant under hand and seal, appoint two justices for the district of Dublin metropolis as defined by the 48 Geo. 3, c. 140 (b), to act as justices in that district, and in the counties of Dublin, Wicklow, Kildare, and Meath, and the liberties therein, and of said district; and such justices may be removed at the pleasure of the lord lieutenant; who may appoint a successor in case of any vacancy. And persons so appointed may so act as justices though not possessed of any legal qualification by estate.*] Provided always, that no such person shall act as a justice of the peace at any court of general or quarter sessions, nor in any manner out of sessions, except for the preservation of the peace,

(a) Entitled "*An act for improving the police in the district of Dublin metropolis.*"

(b) Viz. "*His majesty's castle of Dublin and all places within eight miles thereof, in any direction, as to all matters and things not within the jurisdiction of the court of admiralty of Ireland.*"—s. 2.

the prosecution of crimes, the detection and committal of offenders, and in carrying into execution the purposes of this act. 6 & 7 W. 4, c. 29.

4. [A sufficient number of men shall be appointed by directions of the chief or under secretary, to act as police for the whole of that district, and who shall be sworn before one of the said justices.] And the men so sworn shall, not only within the said district, but also within the counties of Dublin, Wicklow, Kildare, and Meath, and within all liberties therein, have all such powers, authorities, privileges, and advantages, and be liable to all such duties and responsibilities, as any constable duly appointed now has or hereafter may have within his constablewick, by virtue of the common law of this realm, or of any statutes made or to be made, and shall obey all such lawful commands as they may from time to time receive from any of the said justices, for conducting themselves in the execution of their office (a).

Dublin police shall have all the powers of constables.

Justices of the peace are judges of record appointed within certain limits, for the conservation of the peace and the execution of divers matters entrusted to them by their commission or act of parliament, *Dalt. J. c. 2*. At common law there existed certain conservators of the peace, who were either elected by the freeholders in full county court, or became such conservators by virtue of their appointment to some other office. *Burn. J. "Justices of the Peace," I*. Among the ancient conservators may be reckoned the lord chancellor, and every judge of the King's Bench, every court of record within its own precincts, all sheriffs, coroners, and constables. *Id. ibid.* To these, may now be added the justices of the peace, *Crompt. 6*. The duty of conservators, was to employ their own, and to command the help of others, to arrest and pacify all persons who, in their presence, and within their jurisdiction and limits, by word or deed, should go about to break the peace. *Dalt. J. c. 1*. By the 1 *Edw. 3. stat. 2, c. 16, Eng. ante 429*, the office of justice of the peace was instituted. That act directs that in every county good men and lawful &c. shall be assigned to keep the peace. This assignment has been long interpreted to be an assignment by the king's commission. At this day justices of the peace in Ireland are of three kinds. 1. The ordinary justices, who derive all their authority from their commission. 2. Justices by charter, as the mayor and principal officers of corporate towns: but it does not follow that all such are justices, for that is given only by a particular grant in the charter, *Per Holt. C. J. 2 Lord Raym. 1030*. 3. Justices by act of parliament, as the assistant barristers, 36 *Geo. 3, c. 25, s. 2, ante 390*, resident magistrates of counties, 6 & 7 *Will. 4, c. 13, s. 31, ante 438*, and the divisional justices, 48 *Geo. 3, c. 140, s. 40*.

NOTE.  
Conservators of the peace.

Of justices of the peace.

(a) See sections 7, 8, and 36, which further regulate the powers and duties of the new Dublin police and constables; and see generally the Dublin police acts, 48 *Geo. 3, c. 140*, and 5 *Geo. 4, c. 102*.

NOTE. and two commissioners of police for Dublin metropolis, 6 & 7 Will. 4, c. 29, s. 1, *ante* 438.

Jurisdiction  
of justices.

The jurisdiction of a justice is bounded by the county for which he is appointed; and so strictly has this been construed, that a justice of the peace could not, while out of his county, make an order, or issue a warrant or summons, respecting things done within it; although it is said that recognizances and informations voluntarily taken before justices any where are good, 2 Hawk. c. 8, s. 44. But by the 59 Geo. 3, c. 92, *ante* 432, a justice holding the commission for two or more adjoining counties may, while in one of those counties, do all matters touching any other of them. A justice of one county may take informations against, and commit, an offender who has committed a crime in another county, or on the high seas, and afterwards comes into the same county with the justice. 2 Hale 51; *R. v. Muilman, Parker*, 241. By the 9 Geo. 4, c. 54, ss. 26 and 27, *post*, the jurisdiction of a county justice extends to all offences committed within 500 yards of the boundaries of his county, or on a journey or voyage, any part of which has been through it; and extends over every city or borough within the county at large, unless it be taken away by express words in the charter, 2 Hale, 47; *Blankley v. Winstanley*, 3 T. R. 279. A justice ought not to interfere in any case in which he is personally interested, 1 Salk. 396; *R. v. Gutteridge* 4, D. & Ry. M. C. 35. To this very general rule. there is however, one exception; viz. when a justice is assaulted or abused in the execution of his office, and no other justice is nigh. In such case, he may immediately commit the assailant, until he find sureties of the peace or good behaviour, *R. v. Revel*, 1 Str. 420.

The authority  
of justices.

The general rule is, that whatever justices, out of general sessions, may do, any one justice is competent to perform, unless an act of parliament require the presence or interference of two or more; and when such is the case, both should be present together. The trust reposed in a justice being personal, he can in no instance delegate his office, *Lamb*. 63. All his duties are either *judicial* or *ministerial*. He acts *judicially*, when he determines offences either upon indictment in general sessions, or summarily in petty sessions or alone; and also when he requires from any party surety for the peace or good behaviour, *Willes v. Bridger* 2 B. & Ald. 286. He acts *ministerially*, in taking informations and examinations, granting and backing warrants, or doing any other act preparatory to the hearing and determining of the case by another tribunal, *Cox v. Coleridge*, 1 B. & Cr. 53. His interference is either imperative (as it usually is), or discretionary; but the discretion of a justice, like that of every court of justice, must not be wild, vague, or capricious, but sound, legal, and regular, and is to be confined within those limits in which an honest man, competent to discharge the duties of his office, ought to confine himself, *R. v. Wilkes*, 4 Burr.

NOTE.

2539; *Wilson v. Rastall*, 4 T. R. 757. In many cases where a statute says that a justice *may* interfere, that word would be construed *shall* or *must*, if his interference were requisite for the public good, *R. v. Barlow*, 2 Salk. 609; *De Beauvoir v. Welch*, 7 B. & Cr. 278. A justice improperly refusing to act, may be compelled by *mandamus* from the King's Bench; but that court will not interfere, when there is a doubt as to the authority of the justice, *R. v. Broderip*, 5 B. & Cr. 239; and rarely, when he has acted within his jurisdiction and duty, and to the best of his judgment, *Burn J. Justices of the Peace*, VI. (2.) Before taking cognizance of a matter, and acting either ministerially or judicially as a justice, he should be cautious in ascertaining whether the case in which he is called upon to act be within the local limits of his jurisdiction; whether, in its nature, it be one over which he has jurisdiction, which he may ascertain from his commission or from the act of parliament giving him jurisdiction over it, as the case may happen; whether he may act alone without the aid of a fellow justice; and whether the case is laid before him in the limited time by a proper and competent person, on proper information on oath or otherwise, *Burn J. Justices of the Peace*, IV. When a statute authorizes a justice to do any thing, it impliedly vests him with all authority necessary for the doing of it. Thus by giving him jurisdiction over an offence, he is empowered to summon the offender, or, in case he does not appear, to issue a warrant for his apprehension, 12 Co. 130; *Bane v. Methuen*, 2 Bingh. 63. The issuing and service of a summons should be dispensed with in serious offences, and where it is likely that the party, if summoned, would fly from justice. *Burn. J. Summons*. It is said that whenever a justice of the peace is empowered by statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, to remain there till he shall comply, 2 Hawk. c. 16, s. 2. He may also commit summarily, or prosecute by indictment, any one who assaults, *R. v. Symmonds*, C. T. Hardw. 240, or insults him while in execution of his office, *R. v. How*, Str. 699. Thus, telling a justice that he is a rogue and a liar, or using expressions which impute partiality or corruption, is a sufficient insult to warrant the commitment, *R. v. Revell*, Str. 420. But the words must be spoken in the presence and hearing of the justice, *R. v. Pocock*, Str. 1157; *R. v. Weltje*, 2 Campb. 142. In such cases, the commitment, being for punishment, can be made only by warrant in writing, *Mayhew v. Locke*, 7 Taunt. 63, under the hand and seal of the justice, 2 Inst. 52; and must be for a time certain, and not generally, until the defendant be discharged by due course of law, *R. v. James*, 5 B. & Ald. 894.

When a justice is acting judicially, and has power to decide upon law, fact, and punishment, all persons have a *prima facie*

Who may be present at proceedings before justices.

## NOTE

right to be present thereat, *Daubney v. Cooper*, 10 B. & Cr. 237; *Anon.* 3 Law Rec. 44: but the magistrate may, in his discretion, prevent any one, whether counsel or attorney, from taking part in the proceedings as an advocate on either side, *R. v. J. J. of Staffordshire*, 1 Ch. R. 217; *Collier v. Hick*, 2 B. & Adol. 663. When the magistrate acts ministerially, his powers are still greater. He may then prevent the advocate, whether he be barrister or attorney, or any other person whatever, from being present, if he think it conducive to the end of justice, *R. v. Borron*, 3 B. & Ald. 432; *Cox v. Coleridge*, 1 B. & Cr. 37, and he may prevent any one who is present from taking notes of the proceedings, *Garnett v. Ferrand*, 6 B. & Cr. 611; and if such notes be afterwards published, it will be no defence to an action of libel, that they formed a fair and impartial account of the proceedings, *R. v. Lee*, 5 Esp. 123; *Duncan v. Thwaites*, 3 B. & Cr. 556.

(Of surety of the peace and good behaviour.

Justices of the peace, being judges of record, are authorized by their commission, and by the statute 34 Edw. 3, c. 1, ante 389, in certain cases to require surety of the peace or good behaviour. In taking these sureties, justices act either ministerially or judicially. 1. *Ministerially*—When they are directed to call for and take the surety, by a writ of supplicavit or attachment of the peace out of Chancery or the King's Bench. When a justice receives such a writ, his duty is to issue a warrant forthwith, to cause the party to be brought before himself, that he may enter into such sureties as are required by the writ, *Dalt. J. cc.* 116. 123; *Hutt's case*, 2 Burr. 1039—2, *Judicially*—when, of his own motion and discretion, or at the request and prayer of another, he compels a party to appear, and enter into such surety as the circumstances may require. *Dalt. J. c.* 116.

To and against whom granted.

These sureties may be granted to and against any one, whether he be a natural-born subject, a denizen, or an alien whose country is in league with ours, even though under the age of fourteen years, provided he be at the time of sane memory. *Dalt. J. c.* 117. So, it may be granted to any one attainted of treason or felony, 1 Hawk c. 60, ss. 2 & 5; or to a husband against his wife, or a wife against her husband, *Id. s.* 4: and in such case, if the marriage be disputed, the recognizance ought to be worded so as not to admit the fact, *R. v. Bambridge* 2 Str. 2, 1231. A justice may grant it to or against his fellow justice, or against his own wife, at the prayer of a third party, *Dalt. J. c.* 117; or against a person of the degree of a knight or baronet, but not against a peer or lord of parliament, or the wife or widow of such persons, or a peeress in her own right. In such case, the safest course is to apply to the court of Chancery or King's Bench, 1 Hawk. c. 60, s. 5.

Surety of the peace, when granted.

Surety of the peace may be granted against any person who has used threats to any other person, menacing him with injury in his own person, or to his wife or children, as by killing, wounding, beating, or imprisoning them, or with the firing

of his house, 1 *Hawk. c.* 60, s. 6. A justice may bind to the peace any one who has been guilty of an affray; or any rioter or barrator; or any person who shall go armed offensively in fairs, markets, &c.; or any one who shall draw weapons, or assault, or even threaten to assault another; and the constable who knows the circumstances ought to arrest the delinquent and carry him before a justice, *Dalt. J. c.* 116. If a constable know that certain persons are fighting or quarrelling in a house, he may break open the doors and arrest them, and carry them before a justice to find surety, *Id. ibid.* But it seems the breaking of doors ought not to be resorted to, until the constable has announced himself and his business, and has been refused admission. If a justice sees that a prize fight is expected, he may cause the intended combatants to be brought before him, and compel them to enter into security to keep the peace, and if they refuse, may commit them, *R. v. Bellingham*, 2 C. & P. 234. To entitle any one to this surety of the peace against another, he ought to prove to the satisfaction of the justice, that such menaces have been used with a malicious intent, that he is in actual fear of their accomplishment, that he has good grounds for such fear, and that he does not demand it out of malice or anger, *Dalt. J. c.* 116. Fear of injury to one's servant is no good ground for the application, because the servant may apply in his own name, *Id. ibid.*; and fear of injury or actual injury to one's cattle or other property is a good ground for granting surety of good behaviour, but not of the peace, *Dalt. J. cc.* 116. 124.

NOTE.

Instead of applying to a single justice or to the court of Petty Sessions, the party may make his complaint to the court of King's Bench, or the court of Quarter Sessions if it be then sitting; and this last is said to be at once the best and most usual course, *Burn, J. Surety of the Peace, IV.* In such case, the grounds of complaint, or *articles of the peace*, are drawn up on parchment, and brought into court, where they are verified by the oath or affirmation of the applicant and such other corroboratory evidence as he may be able to bring forward, *Id. ibid.* These articles are not entitled in any court or cause, *King v. Cole*, 6 T. R. 642; *Bevan v. Bevan*, 3 T. R. 601. The party exhibiting the articles need not answer any questions put on behalf of the person against whom they are applied for, *R. v. Earl Ferrers*, 1 Burr. 634. If the court think that the case made on the face of the articles is sufficient, it orders process to issue to compel an appearance. In the King's Bench, this process is an attachment, *Hutt's case*, 2 Burr. 1039, but at Quarter Sessions, the warrant of the assistant barrister usually issues. The King's Bench is unwilling to receive articles of the peace against a party residing at a distance in the country, unless it be shewn that application has been previously made to a justice in the neighbourhood, *R. v. Waite*, 2 Burr. 780: and where it did receive them, it ordered an indorsement to be made on the attachment of the peace, directing any justice of the

Articles of the peace.

## NOTE.

county to take the particular security mentioned, that the defendant might be saved the trouble of coming to town, *Hutt's case*, 2 *Burr.* 1039; and see *R. v. Lewis*, 2 *Str.* 835.

Surety for  
good  
behaviour.

For what  
granted.

Surety for good behaviour is of great affinity with surety of the peace, both as to the cause and manner of giving it. A surety for good behaviour includes in itself a surety of the peace, *Dalt. J. c.* 122; and therefore, it would seem that every thing which is a cause for binding a party to the peace is also a cause for binding him to good behaviour. Persons who charge another before a justice with felony, riot, or forcible entry, and yet refuse to prosecute or give evidence; who outrageously misbehave in the presence or hearing of a justice, or speak contemptuous words of him, though not in the execution of his office, *R. v. Rogers*, 2 *Ld. Rd.* 778; *R. v. Langley*, 6 *Mod.* 125, who publicly accuse him of ignorance of his duty, *R. v. Burford*, 1 *Ventr.* 16; who abuse his warrant; who assault or abuse a constable in the execution of his duty; who poison or destroy the cattle or goods of others; who live riotously and profusely, without any visible means, and cannot give a good account of themselves when called on; *Claxton's case*, 12 *Mod.* 566; who keep brothels, or are common frequenters of brothels; or libellers; all may be compelled to find sureties for their good behaviour, 1 *Lev.* 107; 12 *Mod.* 566; *Dalt. J. c.* 124; 1 *Hawk. c.* 61. So also, where a writing is full of obscene ribaldry, without any kind of reflection upon any one, the author it seems may be bound to his good behaviour, as a scandalous person of evil fame, 1 *Hawk. c.* 73, s. 9. The publishing an obscene book, *Fort.* 193; suborning witnesses, *March* 11, pl. 30; exciting discontent in the minds of the people, *Rudyard's case*, 2 *Ventr.* 22; offering medicine to destroy a child in the womb, 1 *Hawk. c.* 61 n.; obstructing a person on his necessary way to a court of justice, 2 *Lill. Reg.* 649; being guilty of forcible entry, or detainer, 1 *Hawk. c.* 64, s. 8; all seem good causes for requiring this surety. But no one ought to be bound to the good behaviour for rash and unmannerly words, as the bare calling another rogue, rascal, teller of lies, drunkard, &c. 1 *Hawk. c.* 61, s. 3. The power which justices have in this respect is very large and indefinite, and extends to the taking surety of all those whom they may have just cause to suspect to be dangerous, quarrelsome, or scandalous; such as nightwalkers, persons generally suspected of being robbers, and all others whose misconduct may bring them within the purview of the statute, 34 *Edw.* 3, c. 1, as persons of evil fame, *Id.* s. 4. But it becomes the magistrate to act in this matter with great caution and discretion, and to remember that in matters which the law hath left indefinite, it is better to fall short of, than to exceed his commission and authority, *Burn J. Surety for the good behaviour*, I.

How granted.

When a justice of the peace sees a person doing, or about to do anything which would warrant him, upon the complaint of a third party, in requiring surety of the peace or good behaviour,

he may, of his own motion, require the offender to find such surety, or cause him to be apprehended and detained until he does so, *Dalt. J. c.* 116. A justice, when applied to, ought to examine the party and his witnesses (if he has any) on oath, or on solemn affirmation if Quakers, Moravians, or Separatists, and take down the grounds of complaint in writing. There ought to be direct evidence of express malice, such as declarations and menaces to that effect. The justice is the proper judge, whether the expressions used are to be taken literally or metaphorically, *R. v. Tregarthen, 5 B. and Adol.* 678. If particular acts of violence are detailed, the party ought not to be allowed to produce witnesses in contradiction, but be bound over to the sessions, when, upon a proper prosecution, they may be negatived if untrue, *R. v. Parnell, 2 Burr.* 806; *R. v. Doherty*, and *Lord Vane's case, 13 East.* 171.

NOTE.

If the justice sees there is sufficient grounds, he may commit the offending party if present, unless, being required, he enter into the proper recognizance; or if absent, he may issue his warrant to bring him before himself or some other justice of the county, *5 Co.* 59; *1 Hawk. c.* 60, *s.* 9. The warrant of apprehension may be addressed to a constable, or any indifferent person. It ought to be under seal, and to show at whose suit, and for what cause it is granted, *1 Hawk. c.* 60, *s.* 9. It may be executed in the same way as a warrant on a charge of misdemeanour. If the party take refuge in a house, and admittance, having been demanded, be refused, the cause of the officer's coming being previously made known, the doors may be broken to take him, *2 Hawk. c.* 14, *s.* 2. If the warrant direct that the party shall be brought before the justice who issued it, that ought to be carefully attended to by the constable. In general, this will be found the most convenient mode of framing the warrant, as the justice who takes the original informations will best know the circumstances, and how the surety is to be measured. But if the warrant authorize the bringing him before any other justice of the same county, the constable may elect before what justice he shall be brought, *1 Hawk. c.* 60, *s.* 13. The arrest ought not to be actually effected, unless the party have refused to go before the justice, *Id. c.* 12.

The warrant.

When the party comes before the justice he must offer sureties, or else the justice may commit him; for the justice needs not to demand surety of him, *Dalt. J. cc.* 118. 169. He is usually bound by himself and two sureties, or if an infant or married woman, by sureties alone, to appear either at the next assizes, or general sessions in that division of the county: or he may be bound for a time certain, *R. v. Bowes, 1 T. R.* 700; *Willes v. Bridger, 2 B. & Ald.* 278; or for an indefinite time, which is construed to be for life, *2 Hawk. c.* 60, *s.* 15. The first course is described as the safest and most usual, *2 Hawk. c.* 60, *s.* 16; *Burn. J. Surety of the Peace,*

How the party shall be bound.



NOTE. *VII*; the second, as in many cases the most convenient, the party with his sureties being saved the trouble of repeated attendances, *Willes v. Bridger*, 2 B. and Ald. 290; and the third, as one in which the justice should be well advised how he granteth surety, inasmuch as neither the king, nor the justice, nor the party, can afterwards discharge it, *Dalt. J. c.* 119.

Of the recog-  
nizance.

The sum in which the recognizance is to be taken, is left wholly to the discretion of the justices, upon a fair consideration of the rank of the offender and other circumstances, 1 *Hawk. c.* 60, s. 15. The sureties may be examined on oath as to their sufficiency, and if insufficient, ought to be rejected. If they should be bound, and the justice should afterwards discover that he had been deceived as to their solvency, he may compel the party to put in other sureties, and may take a new recognizance for the same. But this he cannot do, if the sureties be dead, for their personal representatives still remain liable, 1 *Hawk. c.* 60, s. 17; *Dalt. cc.* 116, 119, 120.

Of committal  
in default of  
surety.

Should the recognizance not be duly and forthwith entered into, the justice may commit the party to the common gaol. The observations as to the committal of offenders charged with crime will apply here, *post P. 2, c. 2*. But it must be observed that the committal should, with convenient certainty, state the cause, the amount of surety required &c., and should command the gaoler to detain the party a certain time, or until the next assizes or sessions, unless in the interim he enter into the required recognizance, but not "until discharged by due course of law," 1 *Hawk. c.* 61, s. 4.

Of super-  
sedeas.

When the party has entered into the surety required before any other than the justice who issued the warrant, such other justice ought, upon request, to grant to the party, a *supersedeas*; whereby he shall be discharged from finding other surety, and from any other arrest for the same cause, *Dalt. J. c.* 118. Also, it is said that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the same county, either before or after a warrant has been issued against him, he may have a *supersedeas* from such justice, 1 *Hawk. c.* 60, s. 14. But justices should be very cautious how they take such surety, else the same mischiefs would ensue that were intended to be prevented by the 10 & 11 *Car. 1, c. 10, ante* 450.

Of appear-  
ance at the  
sessions.

The recognizance having been acknowledged, it ought to be certified to the next Quarter Sessions in the same division of the county, "that the party so bound may be called." 3 *Hen. 7, c. 1, s. 26, Eng.* If he do not appear when called, the recognizance becomes forfeit, and the default should be recorded; "and the same recognizance with the record of the default, be sent and certified into the Chancery, or afore the king in his Bench, or into the king's Exchequer." *Id. s.* 27. But the sessions are not bound peremptorily to record his default; they may consider of the reasonableness of any excuse offered for his non-appearance, 1 *Hawk. c.* 60, s. 18. If he appear, proclamation is made that "if any person can shew cause why the peace granted

against such a one shall be continued, he shall speak." If no one appear or show cause, he will be discharged, *Dalt. J. c.* 120. If any one appear, even though it be not the original applicant, it is said that the court, upon sufficient cause shewn, either for the non-appearance of such applicant, or for the continuance of the surety generally, may bind him over to the next sessions, *Talf. Dick. Sess.* 404. But its power in the former alternative seems very questionable, *R. v. Bowes*, 1 *T. R.* 700. If the applicant appear, he may then move the court to receive articles of the peace against the party; which, when engrossed, and sworn or affirmed to, are preserved by the clerk of the peace; and the party is bound by recognizance anew, or committed in case of refusal, *ante* 446. If the justice should have neglected to certify the recognizance to the sessions, the party ought nevertheless, to have appeared there, and recorded his appearance, *Dalt. J. c.* 120.

NOTE.

But besides this default of appearance, there are many other ways in which the recognizance may be forfeited. A recognizance for the peace will be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement, as manslaughter, rape, robbery, unlawful imprisonment &c. 1 *Hawk. c.* 60, *s.* 20. So also, it may be forfeited by any treason against the king, by any unlawful assembly to the terror of the people, and even by words directly tending to a breach of the peace, as by challenging one to fight; or in his presence threatening to beat him, *Id. s.* 21; or in his absence uttering such threats, and afterwards lying in wait to carry them into execution, *Dalt. J. c.* 121. Whatever act is a breach of the peace, is also a forfeiture of this recognizance, *Id. ibid.* But assaults which are justifiable, as being in defence of one's person, his wife, child, servant, or property, or to prevent the commission of crime, are not forfeitures of the recognizance, *Id. ibid.*; 1 *Hawk. c.* 60, *ss.* 23, 24.

How the recognizance may be forfeited.

A recognizance for the good behaviour shall be forfeited for all such matters as would cause a forfeiture of recognizance for the peace; and others besides, as for going armed with great numbers to the terror of the people, or speaking words tending to sedition &c.; and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may never actually happen, 1 *Hawk. c.* 61, *s.* 6.

It is said that the sessions cannot in any case proceed against the party for a forfeiture of his recognizance. In such case, the recognizance itself must be removed by certiorari into some of the superior courts at Dublin, where it shall be proceeded on by scire facias, 1 *Hawk. c.* 60, *s.* 18.

Of proceedings on the recognizance.

The recognizance may be discharged several ways:—By performing its condition, as by keeping the peace for the time specified, *R. v. Benn*, *C. T. Hardw.* 91. 2. By the death of the king, whose peace is thereby conditioned to be kept. Of the discharge of the recognizance.

## NOTE.

3. By the death of the party bound. 4. By the order of the court above, into which it may have been removed, 1 Hawk. 60, s. 17; *Dalt. J. c.* 120; and this order may be obtained when the court is satisfied that the surety ought never to have been granted, as that the party demanding it was insane, *Ex Mackenzie*, 3 Burr. 1922; or that it was obtained on false suggestions, *R. v. Parnell*, 2 Burr. 806; or when the party whose favour it was granted, expresses his willingness to release it, which he may do, either by affidavit, or by his counsel in open court. This last, though not sufficient as a cause, is allowed to operate as a strong inducement to the court to order a discharge of the recognizance, 1 Hawk. c. 60, s. 17; *R. v. England*, C. T. Hardw. 149; *R. v. Earl Ferrers*, Burr. 636. 703. If the party who demands the surety should die while the offender is in custody for refusing to enter into it, the justice may make his *liberate*, or warrant for delivery of the prisoner, *Dalt. J. c.* 118.

Suppressing  
breaches of  
the peace.

If a justice of peace find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail; but he may also authorize others to arrest them, by a bare parol command without other warrant; and by force thereof, the persons so commanded may pursue and arrest the offenders, in his absence as well as presence, 1 Hawk. c. 65, s. 16. A justice then, having the power to interfere for the preservation of the peace, it becomes a criminal offence punishable on information if he refuse, *R. v. Kennett*, 5, C. & P. 282. Nor is it any excuse for a magistrate to say he was afraid: his fear must arise from actual danger, such as would affect a firm and constant man. *Id. ibid.* He must do all that he knows to be in his power, and that can be expected from a man of ordinary prudence, firmness, and activity, *R. v. Pinney*, 5, C. & P. 254. His first course then ought to be, to call in the aid of the constabulary, a force whose peculiar duty it is to aid the magistrate in preserving the peace. If constables cannot be procured in sufficient force, private persons, or even the military may be called in. But it is no part of the duty of a magistrate to marshal or array the constables or military, or to head them when actually engaged in suppressing a riot. That belongs altogether to the officers of those respective forces, *R. v. Pinney*. When the aid of private persons is required, the magistrate may furnish them with fire-arms, or other weapons, *Case of Armes*, *Poph.* 121; but this is a step that ought to be cautiously taken, as arms given indiscriminately to persons unused to them, and unaccustomed to act in concert, might ultimately fall into the hands of the rioters, and thus the disturbance be increased, *R. v. Pinney*. So also, private persons are justified in arming themselves to quell riots, *Poph.* 121; even without any warrant or sanction of a magistrate; and may disperse those who are assembled, stay those

engaged from executing their purpose, and stop and prevent others from joining them; although it would always be more discreet, unless the occasion demand immediate action, for private persons to act under the advice of magistrates. What has been stated of private persons will also apply to the military. The law acknowledges no distinction; the soldier is still a citizen, lying under the same obligation, and invested with the same authority to preserve the peace of the king as any other subject. The same exercise of discretion, which requires the private subject to act in subordination to, and in aid of the magistrate, before recourse is had to arms, ought to operate in a still stronger degree with a military force, *Per Tyndal, C. J.*; 5 C. & P. 262 n. In fact, no prudent military man would act without a magistrate, or at least an order from him, which is all that is required, *R. v. Pinney*. If the magistrate finds that the riot cannot be otherwise quelled, he should read aloud the proclamation from the riot act, *ante* 142. He need not wait until the disturbance has amounted strictly to what the law calls a riot. If there be such an assembly, that there would be a riot, if the parties were to carry their purpose into effect, it is enough, *R. v. Woolcock*, 5 C. & P. 516. This is a step in *terrorem*, and of gentleness, and is not made a necessary step, as he may instantly repel force by force. If the insurgents are not doing any act, the reading of the proclamation operates as notice. It is *prima facie* the duty of a magistrate to read the act; but this duty depends on circumstances; for he might be alone and not able to do it, *R. v. Kennett*, 5 C. & P. 295. All persons who remain riotously assembled, to the number of twelve or upwards, for the space of one hour after the proclamation made, are guilty of a capital felony, 27 Geo. 3, c. 15, s. 1, *ante* 142. And when the proclamation is read two or three times, the hour will be counted from the first reading, *R. v. Woolcock*, 5 C. & P. 516. But it should not be imagined that because the law allows an hour for the dispersion of a mob, the civil power and the magistracy during that time are disarmed. No such meaning was within view of the legislature, nor does the operation of the act warrant any such effect. The civil magistrates are left in possession of those powers which the law had given them before. *Per Lord Loughborough C. J.*, 21 St. Tr. 493.

With respect to what amounts in law to a riot, rout, affray, or unlawful assembly, see *Archb. Pl. & Ev.* 446 & seq; 1 Hawk. c. 65. If any person encourages or promotes, or takes part in riots, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter; he is liable to be arrested for a breach of the peace; and in such a case all are principals, *Clifford v. Brandon*, 2 Camp. 370. The only safe course for the peaceable and well disposed on all occasions of popular tumult, is this, to lend their ready aid to assist the magistrates in suppressing it, or, at least, forthwith to separate themselves from the rioters, *Per Tyndal, C. J.*, 5 C. & P. 265.

**NOTE.**  
The privileges of justices of the peace.

A justice of the peace shall not be harassed for matters done in execution of his duty, merely on colourable pretences, *R. v. Wallis, Lofft.* 88. He will never be punished criminally for a mere irregularity, *R. v. Fielding*, 2 *Burr.* 719, or error of judgment, if his intentions be pure, *R. v. Young*, 1 *Burr.* 556; *R. v. Cox*, 2 *Burr.* 785; *R. v. Palmer*, 2 *Burr.* 1162; *R. v. Jackson*, 1 *T. R.* 653; *R. v. Borron*, 3 *B. & Ald.* 432; and if he has done all that he knew was in his power, and which could be expected from a man of ordinary prudence, firmness, and activity, *R. v. Pinney*, 5 *C. & P.* 254. But if he wilfully neglect his duty, or knowingly misconduct himself therein; or in his conduct exhibit partiality, malice, or corruption, he may be proceeded against by indictment or criminal information, *R. v. Fox*, 1 *Str.* 21; *R. v. Newton*, 1 *Str.* 413; *R. v. Athay*, 2 *Burr.* 653; *R. v. Williams*, 3 *Burr.* 1317; *R. v. Hann*, 3 *Burr.* 1716; *R. v. The Justices of Nottingham*, *Sayer* 216; *R. v. Sainsbury*, 4 *T. R.* 451; *R. v. Williamson*, 3 *B. & Ald.* 582. A justice who acts without having taken the oaths, or otherwise qualified himself according to law, will subject himself to a penalty, and a prosecution by indictment; but his acts will nevertheless be held valid. *The Margate Pier Company v. Hannam*, 3 *B. & Ald.* 266. A magistrate shall not be vexed both by prosecution and action; and therefore, before granting an information, the king's bench will require that all civil remedies be abandoned, *R. v. Fielding*, 2 *Burr.* 719. If an action and indictment concur, the attorney-general will, upon application, enter a *noli prosequi* on the latter. *Id.* 720.

A justice of the peace who acts *judicially* in a matter over which he has jurisdiction, and does not exceed that jurisdiction, no matter how erroneous his decision be, is not liable in any form of civil action, unless he has acted maliciously and without reasonable or probable cause, 2 *Hawk. c.* 8, s. 74; 43 *Geo.* 3, c. 141; *Burley v. Bethune*, 5 *Taunt.* 583. But he may be sued, if he take upon him to act in a matter over which he has no jurisdiction, *Bramwell v. Penneck*, 7 *B. & Cr.* 536; *Lancaster v. Greaves*, 9 *B. & Cr.* 629; or if, having jurisdiction, he exceed it, *Cripps v. Durdon*, *Cowp.* 640; or if he commit to prison in the first instance, without endeavouring to levy the penalty by distress, under a statute which authorizes commitment only in default of distress, *Hill v. Bateman*, 1 *Str.* 710; or if the conviction do not follow the form given by the act, when an adherence to it is required by the act, *Davison v. Gill*, 1 *East.* 64; or do not, on the face of it, disclose an offence for which the party was liable to punishment, and over which the justice had jurisdiction, *Gimbert v. Coyney*, *M.C. & Y.* 469; or if the commitment be not preceded by a conviction, *R. v. Rhodes*, 4 *T. R.* 220, or if it be not in writing, *Huchison v. Lowndes*, 4 *B. & Adol.* 110; or do not substantially follow the conviction, *Rogers v. Jones*, 3 *B. & Cr.* 409; *Massey*

*v. Johnson*, 12, *East*. 67. But a justice is not liable, if he act upon a complaint made on oath, by the terms of which he would have jurisdiction, though the real facts might not have supported the complaint, if such facts were not laid before him by the party complained against, after being summoned to attend. *Lowther v. Earl of Radnor*, 8 *East*. 113; *Mann v. Davers*, 3 *B. & Ald.* 103.

NOTE.

If a justice in his *ministerial* capacity should act corruptly, he is liable in a civil action to the party grieved, as well as on a criminal prosecution. Thus if he issue his warrant for the apprehension of a man on a charge of felony, no information having been previously laid before him, *Windham v. Clere*, *Cr. El.* 130, he may be sued in trespass, *Morgan v. Hughes*, 2 *T. R.* 225; or if he commit a person charged with crime for reexamination for an unreasonable time (in this case it was fifteen days), although without any improper motive, *Davis v. Capper*, 10 *B. & Cr.* 28. But he is not liable, if he should, out of a mistaken view of the law, commit to prison on a charge of felony, although the facts sworn to, do not, if true, necessarily exhibit even a trespass, *Mills v. Collett*, 6 *Bing.* 85.

County of S. } Be it remembered that on &c., A. B. of &c.  
to wit. } came personally before me, J. P. one of his  
\_\_\_\_\_ } majesty's justices of the peace in and for the  
said county, at &c., and on his oath informed me that C. D. of  
&c. did on &c., at &c., most violently and maliciously declare and  
threaten, &c., and did also on &c., [*here state the defendant's*  
*threats and acts.*] and that from the above premises, he, this  
complainant is afraid the said C. D. will do him some grievous  
bodily injury, \* and therefore prays that the said C. D. may be  
required to find sufficient sureties to keep the peace(a) towards  
him, this complainant; and this complainant also saith that he  
doth not make this complaint against, nor require such sureties  
from the said C. D., from any hatred, malice, or ill will, but  
merely for the preservation of his life and person from injury.

Sworn before me, J. P.

A. B.

FORMS.  
(1)Information  
before a  
justice to  
obtain  
surety of the  
peace.

County of S. } To E. F. constable of the said county, and  
to wit. } all others whom it may concern.  
\_\_\_\_\_ } Whereas, A. B. of &c. hath this day made  
oath before me J. P. one of &c., at &c., that C. D. of &c.,  
did on &c., at &c., most violently, &c. [*Recite as in last*  
*form to.\**] and therefore the said A. B. hath prayed that the  
said C. D. may be required to find sufficient sureties to

(2)

Warrant  
thereon.

(a) These forms may be adapted to the case of a surety for good behaviour, by simply altering the expression.

**FORMS.** keep the peace towards him the said A. B. I do therefore command you to apprehend and bring the said C. D. before me, or some other justice of the peace for the said county, to answer the said complaint, and to find sufficient sureties to keep the peace towards his majesty and all his subjects, and especially towards the said A. B., for such period as shall be enjoined him, and to be further dealt with according to law. Given under my hand and seal the day of 1837. J. P. (Seal.)

(3)  
Commitment  
by the justice  
for want of  
sureties.

County of S. } To E. F. constable of the said county, and  
to wit. } also to the keeper of [his majesty's gaol] at T.  
\_\_\_\_\_ } [for said county] and others whom this may  
concern.

Whereas, A. B. of &c. [*Recite the complaint as in the warrant*] and whereas the said C. D. was this day brought and appeared before me, J. P. one of &c., at &c., to answer the said complaint; \* and I the said justice have ordered and adjudged, and do hereby order and adjudge, that the said C. D. shall enter into his own recognizance in the sum of [£100], with two sufficient sureties in the sum of [£50] each, to keep the peace towards &c. [*as in the warrant*] for the term of [one year,] now next ensuing : and inasmuch as the said C. D. hath refused, and still refuses to enter into such recognizance, and to find such sureties as aforesaid ; I do hereby require and command you the said constable, forthwith to convey the said C. D. to the [common gaol] of the said county, and to deliver him to the keeper thereof, together with this warrant. And I do also require and command you the said keeper, to receive the said C. D. into your custody in the said [gaol]. and him there safely to keep,† for the space of [one year], unless he, in the mean time, enter into such recognizance, with such sureties as aforesaid, to keep the peace in the manner and for the term aforesaid. Herein fail not. Given under my hand and seal the day of 1837.

J. P. (Seal.)

(4)  
Commitment  
for want of  
sureties to  
appear at the  
sessions.

Whereas, &c. [*as in last form to \**] and having been required by me to find sufficient sureties, as well for his appearance at the next general quarter sessions of the peace, to be held for the division of the said county, to do and receive what shall be then and there enjoined him by the court, as also in the mean time to keep the peace towards &c. [*as in the warrant*] hath refused and neglected, and still refuses and neglects to find such sureties. I do therefore, &c. [*as in last form to †*] until the next general quarter sessions of the peace to be held for the division of the said county, unless he, in the meantime, find sufficient sureties, as well for his appearance at the said sessions, as in the meantime to keep the peace as aforesaid. Given, &c. [*as in last form.*]

County of S. } Be it remembered that on &c., C. D. of &c., **FORMS.**  
to wit. } L. M. of &c., and N. O. of &c. came before **(5)**  
\_\_\_\_\_ } me, J. P. one of &c., and acknowledged them- **Recogni-**  
selves to owe to our said lord the king, to wit, the said C. D. **zance.**  
the sum of [£100], and the said L. M. the sum of [£50], and  
the said N. O. the sum of [£50], of good and lawful money of  
Ireland, to be respectively made and levied of their several  
goods and chattels, lands and tenements, to the use of our said  
lord the king, his heirs and successors, if he the said C. D.  
shall fail in performing the condition underwritten.

Acknowledged before me J. P.

The condition of this recognizance is such, that if the said  
C. D. shall keep the peace towards &c. [*as in the commitment,*  
*No. 3.*] then the said recognizance shall be void, or else remain  
in force(a).

**(6)**  
**Conditions**  
**to keep the**  
**peace for a**  
**time certain.**

The condition of this recognizance is such, that if the said  
C. D. shall personally appear at the next general &c. [*as in*  
*commitment No. 3 to †*] then &c. [*as in last form.*]

**(7)**  
**Condition to**  
**appear at**  
**sessions.**

County of S. } To the keeper of [his majesty's gaol] at T.  
to wit. } [for said county], and all whom it may con- **(8)**  
\_\_\_\_\_ } cern. **Liberate to**  
**discharge one**  
**committed**  
**for want of**  
**sureties.**

You are hereby commanded to discharge out of your cus-  
tody, the body of C. D. of &c., he having this day entered into  
a recognizance before me, J. P. one of &c., in the sum of  
[£100], with two sureties in [£50] each, to keep the peace  
towards, &c. [*as in commitment No. 3.*] Given, &c. [*as in the*  
*warrant No. 2.*]

County of S. } To all sheriffs, bailiffs, constables, and **(9)**  
to wit. } others within the said county. **Supersedeas.**  
\_\_\_\_\_ }

Forasmuch as C. D. of &c., hath personally come before me,  
J. P., one of &c. [*Recite the entering into the recognizance and*  
*its condition*]. Therefore on the behalf of our said lord the  
king, I command you, and every of you, that you utterly for-  
bear and surcease to arrest, take, imprison, or otherwise by any  
means for the said cause, to molest the said C. D.; and if you

(a) Where a woman exhibited articles of the peace against a person whom  
she alleged to be her husband, but he denied the marriage; the court ordered  
the recognizance to run in the following form, so as not thereby to admit  
the marriage:—"To keep the peace towards our lord the king, and all his  
"liege people, and particularly towards H. P. who hath exhibited articles of  
"the peace against him the said J. B., by the name of H. B., wife of him  
"the said J., and that he shall not depart the court without leave, &c."—  
*R. v. Bambridge, 2 Str. 1231.*



**FORMS.** have, for the said occasion and none other, taken and imprisoned him the said C. D., that then him you deliver, or cause to be delivered, and set at liberty without further delay. Given, &c. [*as in the warrant No. 2*].

(10)  
Articles of  
the peace ex-  
hibited at  
sessions.  
Caption.  
At the general quarter sessions of the peace of our lord the king, holden at &c., in and for the      division of the county of &c. [by adjournment] on &c. in the      year of the reign of &c., before J. P., W. D. Esqrs. and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county.

Title.      [County of S.] Articles of the peace exhibited by A. B. of &c. on behalf of himself [and H. his wife, (she the said H. being now confined through sickness in this exhibitant's dwelling-house, situate as aforesaid)] against C. D., late of &c., in order to preserve the life and person [*or lives and persons*] of himself, this exhibitant, [and the said H. his wife,] from bodily harm.

Articles.      This exhibitant on his oath saith, that on &c., about [seven o'clock in the evening] the said C. D. came to the door of this exhibitant's dwelling-house, and knocked thereat &c. [*State the facts particularly as they occurred.*]

And this exhibitant on his oath further saith, that [the said H. B., this exhibitant's said wife, is now so sick and weak that she cannot be removed from her home to attend this honourable court, to join in the exhibition of this complaint, and that] he this exhibitant, by means of the premises aforesaid, conceives himself [and his said wife] to be in great bodily danger. And he further saith that he doth not make this complaint against the said C. D., through any hatred, malice, or ill-will, but merely for the preservation of his life and person, [*or the life of his said wife and his own, and also of their persons*] from bodily harm.

Sworn at the sessions-house at      this  
day of      1837.

A. B.

By the court.

## PART II.

### OF THE PROCEEDINGS TO BRING OFFENDERS TO PUNISHMENT.

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#### CHAPTER I.

##### OF THE INFORMATIONS AND ARREST.

3 *Edw. 1*, (*Statute of Westminster, I.*) c. 9.] And forasmuch as the peace of this realm hath been evil observed heretofore for lack of quick and fresh suit making after felons in due manner, and namely because of franchises, where felons are received; (2) it is provided, that all generally be ready and appalled, at the commandment and summons of sheriffs, and at the cry of the country, to sue and arrest felons, when any need is, as well within franchise as without; (3) and they that will not so do, and thereof be attainted, shall make a grievous fine to the king: (4) and if default be found in the lord of the franchise, the king shall take the same franchise to himself; (5) and if default be in the bailiff, he shall have one year's imprisonment, and after shall make a grievous fine; and if he have not whereof, he shall have imprisonment of two years. (6) And if the sheriff, coroner, or any other bailiff within such franchise, or without, for reward, or for prayer, or for fear, or for any manner of affinity, conceal, consent, or procure to conceal the felonies done in their liberties, or otherwise will not attach nor arrest such felons there, as they may, or otherwise will not do their office for favour born to such misdoers, and be attainted thereof; they shall have one year's imprisonment, and after make a grievous fine at the king's pleasure, if they have wherewith; and if they have not whereof, they shall have imprisonment of three years(a).

At summons of the sheriff, all shall join in hue and cry.

7 *Will. 3*, c. 17 (b), s. 7.—Provided also, and be it enacted, that no person or persons, upon the Lord's day

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(a) See further as to the pursuit by hue and cry, the old English statutes 13 *Edw. 1*, stat. 2, (*Statute of Winton*), cc. 1, 2, 6; 28 *Edw. 3*, c. 11, and 7 *Rich. 2*, c. 6. But the two former statutes have been greatly amended, and the following of hue and cry generally regulated in Ireland by, the 10 & 11 *Car. 1*, c. 13. Owing to the great improvements which have taken place in the police of the country, this practice and all the learning relating to it has become nearly, if not altogether, obsolete.

(b) Entitled, "*An act for the better observation of the Lord's day, commonly called Sunday.*"

7 W. 3, c. 17.

Service of process on Sunday shall be void, except in cases of treason, felony, or breach of the peace.

commonly called Sunday, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace); but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person and persons so serving or executing the same shall be as lyable to the suit of the party grieved, and to answer damage to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all.

If persons, against whom warrants are issued, escape into another county, a justice of such county may back the warrant, for execution.

44 Geo. 3. c. 92(a), s. 1.—Whereas it frequently happens that persons, against whom warrants are granted by justices of peace for the several counties and places in Ireland, escape into other counties or places, out of the jurisdiction of the justices of peace granting such warrants; and it may also frequently happen, that persons having committed offences in some county or place in Ireland, may reside or be in some other county or place out of the jurisdiction of the justice or justices of the county or place in which such offence was committed, whereby such offenders may or will easily avoid being punished for the offences wherewith they are charged; be it therefore &c., that from and after the first day of August (1804), in case any person, against whom a warrant shall be issued by any justice or justices of the peace of any county, city, liberty, town, or place within Ireland, shall escape, go into, reside, or be in any other county, city, liberty, town, or place, out of the jurisdiction of the justice or justices granting such warrant as aforesaid; it shall and may be lawful for any justice or justices of the peace for the county, city, liberty, town, or place, where such person shall escape, go into, reside, or be, and such justice or justices is and are hereby required, upon proof being made upon oath of the hand-writing of the justice or justices granting such warrant, to indorse his or their name or names on such warrant, which indorsement shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in the county, city, liberty, town, or place, where the same was indorsed, and to apprehend and carry such offender or offenders before the justice who indorsed such warrant, or before some other justice or justices of such other county, city, liberty, town, or place where such warrant was indorsed; and in case the offence for which such offender shall be apprehended, shall beailable in

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(a) Entitled "*An act to render more easy the apprehending and bringing to trial offenders escaping from one part of the united kingdom to the other, and also from one county to another.*" Before the passing of this act, the way in which offenders against the law of Ireland, taken in England, could be sent to Ireland, or *vice versa*, was by warrant of a secretary of state. *Lundy's Case*, 2 Ventr. 314; *R. v. Kimberley*, 2 Str. 848, 1 Barnard, 225; *Sedley v. Arbouin*, 3 Esp. 174.

law, and such offender shall be willing and ready to give bail for his or their appearance at the next assizes or general gaol delivery, or next general quarter sessions of the peace to be held in and for the county, city, liberty, town, or place, where the offence was committed, such justice or justices by whom such warrant was indorsed, or such other justice before whom any such offender or offenders shall be brought, shall and may proceed with such offender or offenders, and take bail for his or their appearance at the next assizes or general gaol delivery, or at the next general quarter sessions of the peace to be held in and for the county, city, liberty, town, or place, where such offence was committed, in the same manner as the justices of the peace of the proper county, city, liberty, town, or place, should or might have done in such proper county, city, liberty, town, or place; and the justice or justices so taking bail as aforesaid, shall deliver the recognizance, together with the examination or confession of such offender or offenders, and all other proceedings relating thereto, had before such justice, to the constable or other officer or officers, or person or persons so apprehending such offender or offenders as aforesaid, who are hereby required to receive the same, and to deliver over such recognizance, examination, or other proceedings, to the clerk of the crown, or clerk of the peace of the county, city, liberty, town, or place, where such offender or offenders is or are required to appear by virtue of such recognizance; and such recognizance, examination, and confession respectively, shall be as good and effectual in law to all intents and purposes, and of the same force and validity, as if the same had been entered into, taken, or acknowledged, before a justice or justices of the peace in and for the proper county, city, liberty, town, or place, where the offence was committed, and the same proceedings shall be had thereon; and in case any constable, officer, or other person to whom such recognizance, examination, confession, or other proceedings shall be delivered as aforesaid, shall refuse or neglect to deliver over the same to the clerk of the crown or clerk of the peace of the county, city, liberty, town, or place, where such offender is required to appear by virtue of such recognizance, such constable, officer, or other person, shall forfeit the sum of five pounds Irish currency, to be recovered against him by bill, civil bill, plaint, or information, in any of his majesty's courts of record in Ireland, by any person or persons who will prosecute or sue for the same, wherein no essoign, protection, or wager of law shall be allowed, nor more than one imparlance; and in case the offence for which such offender or offenders shall be apprehended and taken in manner aforesaid, shall not be bailable in law, or such offender or offenders shall not give bail for his or their appearance at the next assizes or general gaol delivery or next general quarter sessions of the peace to be held in and for the county, city, liberty, town, or place where the offence was

44 G. 3, c. 92.

And, if the offence be bailable, such justice may take bail, and transmit the recognizance to the proper county, by the constable.

Penalty for not delivering the recognizance, £5.

If offender be not bailed, he shall be taken before a justice of the proper county.

44 G. 3, c. 92. committed, to the satisfaction of the justice before whom such offender or offenders shall be brought, then and in such case the constable, officer, or other person so apprehending such offender or offenders, shall carry and convey such offender or offenders before one of his majesty's justices of peace of the proper county, city, liberty, town, or place, where such offence was committed, there to be dealt with according to law. .

Justices  
backing  
warrants,  
not liable  
to actions.

2. That no action of trespass, false imprisonment, or indictment, or other action, shall be brought, sued, commenced, or prosecuted by any person or persons whatsoever, against the justice or justices who shall indorse such warrant, for or by reason of his or their indorsing such warrant: provided always, that such person or persons shall be at liberty to bring or prosecute his or their action or suit against the justice or justices who originally granted such warrant, in the same manner as such person or persons might have done in case this act had not been made.

Offenders  
escaping  
from Ireland  
into Great  
Britain, may  
be appre-  
hended  
by virtue of a  
backed war-  
rant, and  
remitted.

3. And whereas it may frequently happen that felons and other malefactors, in that part of the united kingdom called Ireland, make their escape into that part of the united kingdom called Great Britain, as also that felons and other malefactors in that part of the united kingdom called Great Britain may make their escape into that part of the united kingdom called Ireland, whereby their offences often remain unpunished, there being no sufficient provision, by the laws now in force in Great Britain and Ireland respectively, for apprehending such offenders and transmitting them into that part of the united kingdom in which their offences were committed: For remedy whereof, be it further enacted, that from and after the first day of August (1804), if any person or persons against whom a warrant shall be issued by any of the judges of his majesty's court of king's bench, or any justice of oyer and terminer or gaol delivery, or any justice or justices of the peace or other person having authority to issue the same within Ireland, for any crime or offence against the laws in force in Ireland, shall escape, go into, reside, or be in any place in England or Scotland respectively, it shall and may be lawful for any justice of the peace of the county, stewartry, riding, division, city, liberty, town, or place, in England or Scotland respectively, whither or where such person or persons shall escape, go into, reside, or be, to indorse his name on such warrant, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county, stewartry, riding, division, city, liberty, town, or place, where such warrant shall be so indorsed, to execute the said warrant in the county, riding, division, city, liberty, town, or place, where it is so indorsed, by apprehending the person or persons against whom such warrant is granted, and to convey him, her, or them, by the most direct

way into Ireland, and before one of the justices of the peace of the county in Ireland, living near the place and in the county where he, she, or they shall arrive and land; which justice of the peace is hereby required to proceed with regard to such person or persons as if the said person or persons had been legally apprehended in the said county in Ireland. 44 G. 3. c. 92.

4. And, for remedy of the like inconveniency by the escape into Ireland of persons guilty of crimes in England or Scotland respectively, be it further enacted, that from and after the first day of August, (1804), if any person or persons against whom a warrant shall be issued by any of the judges of his majesty's court of king's bench, or of the courts of great sessions in Wales, or any justice of oyer and terminer or gaol delivery, or any justice or justices of the peace of any county, stewardry, riding, division, city, liberty, town, or place, within England or Scotland respectively, or other person having authority to issue the same within England or Scotland respectively, for any crime or offence against the laws of England or Scotland respectively, shall escape, go into, reside, or be in any place of that part of the united kingdom called Ireland, it shall and may be lawful for any justice of the peace of the county or place in Ireland, whither or where such person or persons shall escape, go into, or reside, or be, to indorse his name on such warrant, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs' officers, constables, and other peace officers of the county or place in Ireland where such warrant shall be so indorsed, to execute the said warrant in the county or place in Ireland where it is so indorsed, by apprehending the person or persons against whom such warrant may be granted, and to convey him, her, or them, by the most direct way into England or Scotland respectively, and before one of the justices of peace of the county or stewardry, in England or Scotland respectively, living near the place and in the county where he, she, or they shall arrive and land, which justice of peace is hereby authorized and required to proceed with regard to such person or persons as if such person or persons had been legally apprehended in the said county or stewardry of England or Scotland respectively.

Offenders  
escaping  
from Great  
Britain into  
Ireland may  
be similarly  
dealt with.

5. [*The expense of removing prisoners shall be defrayed by the treasurer of the county in which the crime was committed; the account being verified on oath before two justices of such county.*]

6. [*The treasurers of counties in Ireland shall be reimbursed such expenses by presentment upon the county at large, made by the grand jury at the next or any subsequent assizes, upon the account and allowance thereof, being laid before them.*]

44 G. 3, c. 92.

Warrants issued in U. K. may be executed in any part of it, pursuant to 13 Geo. 3, c. 31, Eng.

54 Geo. 3, c. 186 (a), s. 2.—That from and after the passing of this act, all warrants issued in England, Scotland or Ireland respectively, may and shall be indorsed and executed, and enforced and acted upon, in any part of the united kingdom, in such and the like manner as is directed by the said last recited act [13 Geo. 3, c. 31. Eng.] in relation to warrants issued or granted in England and Scotland respectively, as fully and effectually to all intents and purposes, as if all the provisions of the said act were in this act severally and separately repeated and reenacted and made part of this act, as to every part of the united kingdom, and as to all justices of the peace, sheriffs' officers, constables or other officer or officers of the peace in Ireland, as well as in England and Scotland respectively.

3. [Any judge in Ireland may indorse letters of second diligence issued in Scotland.]

13 Geo. 3, c. 31(b), s. 1 Eng.—Whereas it frequently happens that felons, and other malefactors, in that part of Great Britain called England, make their escape into that part of Great Britain called Scotland; and also that felons, and other malefactors, in that part of Great Britain called Scotland, make their escape into that part of Great Britain called England; whereby their offences often remain unpunished, there being no sufficient provision, by the laws of either of the two parts of the united kingdom for apprehending such offenders, and transmitting them into that part of the united kingdom in which their offences were committed: for remedy thereof may it, &c.,

Offenders in England escaping into Scotland may be there arrested by virtue of a backed warrant, and conveyed into England.

\* Riding, division, city, liberty, town.

And be it &c., that from and after the passing of this act, if any person or persons, against whom a warrant shall be issued by any justice or justices of peace of any county, riding, division, city, liberty, town, or place, within that part of Great Britain called England, for any crime or offence against the laws of that part of the united kingdom, shall escape, go into, reside, or be in any place of that part of Great Britain called Scotland, it shall and may be lawful for [the sheriff, or steward depute, or substitute, or] any justice of peace of the county\* or place where such person or persons shall escape, go into, reside, or be, to indorse his name on the said warrant; which warrant, so indorsed, shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed; and also to all [sheriffs' officers, stewards officers,] constables, and other peace officers

(a) Entitled, "An Act for the more easy apprehending and trying of offenders, escaping from one part of the united Kingdom to the other."

(b) Entitled, "An Act for the more effectual execution of criminal laws in the two parts of the United Kingdom."

of the county\* or place where such warrant shall be so indorsed, to execute the said warrant in the county\* or place where it is so indorsed, by apprehending the person or persons against whom such warrant is granted, and to convey him, her, or them, into the county, [riding, division, city, liberty, town,] or place, of that part of Great Britain called England, being adjacent to that part of Great Britain called Scotland, in which the crime was committed, and before † one of the justices of peace of such county, [riding, division, city, liberty, town,] or place, to be there dealt with according to law : or, in case the crime was committed in a county not next adjacent to that part of Great Britain called Scotland ; then, and in every such case, to convey him, her, or them, into any county of that part of Great Britain called England, next adjacent to that part of Great Britain called Ireland, and before † one of the justices of peace of such county, which † justice of peace is hereby authorized and required to proceed with regard to such person or persons, [in the manner directed by an act made in the 24 Geo. 2, c. 55, s. 1, *Eng.(a)*,] as if the said person or persons had been apprehended in the said county.

13 G. 3, c. 31.

† The sheriff,  
or steward  
depute, or  
substitute, or

according to  
the rules and  
practice of  
the law of  
Scotland.

2. [A similar provision is made with respect to persons escaping from Scotland into England, *mutatis mutandis*, and omitting the words in brackets and inserting those in the margin."]

5 Geo. 4, c. 18(b) s. 6.—And whereas warrants addressed to constables, headboroughs, tithingmen, borsholders, or other peace officers of parishes, townships, hamlets or places, in their characters of and as constables, headboroughs, tithingmen, borsholders, or other peace officers of such respective parishes, townships, hamlets or places, cannot be lawfully executed by them out of the precincts thereof respectively, whereby means are afforded to criminals and others of escaping from justice : for remedy whereof, be it further enacted, that it shall and may be lawful to and for each and every constable, and to and for each and every headborough, tithingman, borsholder, or other peace officer for every parish, township, hamlet or place, to execute any warrant or warrants of any justice or justices of the peace, or of any magistrate or magistrates within any parish, township, hamlet or place, situate, lying or being within that jurisdiction for which such justice or justices, magistrate or magistrates, shall have acted when granting such warrant or warrants, or when backing or indorsing any such warrant or warrants, in such and the like manner as if such warrant or warrants had been addressed to such constable, headborough, tithingman, borsholder or other peace officer, specially by his

Constables  
may execute  
warrants out  
of their pre-  
cincts, if  
within the  
jurisdiction  
of the justice  
granting or  
backing the  
same.

(a) The provisions of this section are almost precisely the same as those of the 44 Geo. 3, c. 92, s. 1, *ante* 456.

(b) Entitled, "An act for the more effectual recovery of penalties before justices and magistrates on conviction of offenders ; and for facilitating the execution of warrants by constables."



5 G. 4, c. 18. name or names, and notwithstanding the parish, township, hamlet or place in which such warrant or warrants shall be executed, shall not be the parish, township, hamlet or place in which he shall be constable, headborough, tithingman or holder, or other peace officer, provided that the same be within the jurisdiction of the justice or justices, magistrate or magistrates so granting such warrant or warrants or within the jurisdiction of the justice or justices, magistrate or magistrates by whom any such warrant or warrants shall be backed or endorsed.

Justices, &c.  
may take  
informations  
touching  
admiralty  
offences.

7 Geo. 4, c. 38(a). Whereas it is expedient that the commissioners named in the commission of oyer and terminer, for the trying of offences committed within the jurisdiction of the admiralty of England; and also the commissioners named in commissions made under an act [46 Geo. 3, c. 54]; and also the justices of the peace in the united kingdom, should have the power, severally as well as jointly, of taking examinations upon oath, touching offences within the jurisdiction of the admiralty of England, and of committing to safe custody persons charged upon oath with such offences; be it therefore enacted, that it shall and may be lawful to and for any one or more of the commissioners for the time being, named or to be named in the commission of oyer and terminer, for the trying of offences committed within the jurisdiction of the admiralty of England; and also to and for any one or more of the commissioners for the time being, named or to be named in any commission made or granted under or by virtue of the said act of the forty-sixth year of king George the Third; and also to and for any one or more of his majesty's justices of the peace for the time being, for any county, riding, division or place in the united kingdom, and they are hereby respectively authorized, empowered and required, from time to time to take any information or informations of any witness or witnesses upon oath, which oath they and each of them are hereby respectively authorized to administer, touching any treason, piracy, felony, robbery, murder, conspiracy, or other offence, of what nature or kind soever, committed upon the sea, or in any haven, river, creek or place where the admiral or admirals hath or have power, authority or jurisdiction; and thereupon, (if such commissioner or commissioners, justice or justices of the peace shall see cause,) by any warrant or warrants under his or their hand and seal or hands and seals, to cause the person or persons charged in such information or informations to be apprehended and committed to safe custody, to remain in such custody until discharged in due course of law, or until bailed, in cases in which bail may by law be taken.

(a) Entitled, "An act to enable commissioners for trying offences upon the sea, and justices of the peace, to take examinations touching such offences, and to commit to safe custody persons charged therewith."

■ An arrest, in criminal cases, is the restraining of an individual's person, in order to be forthcoming to answer an alleged or suspected crime. 4 *Bl. Com.* 289. NOTE.  
Of arrest.

■ Bare words will in no case amount to an arrest. The party effecting it should actually seize or touch the offender's body, or otherwise restrain him. *Genner v. Sparkes*, 1 *Salk.* 78. The mere requiring a party to go before a justice is no arrest. *Dalt. J. c.* 170. If a magistrate's warrant be shewn by the constable who has the execution of it, to the person charged with an offence, and he thereupon voluntarily attend the constable to the magistrate, by whom, after examination, he is dismissed; this does not amount to an arrest, the warrant having been used only as a summons. *Arrowsmith v. Le Mesurier*, 2 *N. R.* 211; but see *Russen v. Lucas*, 1 *C. & P.* 153, and *Chinn. v. Morris*, 2 *C. & P.* 361. If a bailiff, having a process against any one, says to him, "you are my prisoner, I have a writ against you," upon which he submits, turns back, or goes with him, though the bailiff never touched him, yet it is an arrest, because he submitted to the process; but if he had fled, it could be no arrest unless the bailiff had laid hold of him. *Horner v. Battyn*, *B. N. P.* 262. Where a sheriff's officer sent a message to a person against whom he had a warrant, asking him to fix a time to attend and give bail, and he accordingly attended; this was nevertheless held to be no arrest. *Berry v. Adamson*, 6 *B. & Cr.* 528. In a very recent case, at nisi prius, *Tindal, C. J.* speaks of *Arrowsmith v. Le Mesurier*, as going "to the very extreme point;" and there held that a person who goes with another to give bail, not voluntarily, but conceiving that he has authority to compel him, although no warrant may have been produced, or the party touched, is completely arrested. *Wood v. Lane*, 6 *C. & P.* 774. It is enough that the officer have the party in such a situation as would enable him with proper force and assistance to detain him. *Per Garrow, B., Nicholl v. Darley*, 2 *Y. & J.* 403. Accordingly, where an officer entered a room and told a party inside that he arrested him, and then locked the door, this was held to be an arrest. *Williams v. Jones*, *C. T. Hardw.* 301. What constitutes an arrest.

A person charged with a crime may be arrested at any time he can be met with, either by day or night. *Mackalley's Case*, 9 *Co.* 66; *Davis v. Russell*, 5 *Bingh.* 354. And Sunday is no protection to him; the cases of treason, felony, and breach of the peace, being excepted out of the statute 7 *Will.* 3, c. 17, *ante* 456. But an attachment from one of the superior courts, although in its nature criminal, cannot be executed on Sunday. *R. v. Myers*, 1 *T. R.* 265; *Lessee Hawkins v. Fackman*, *Ir. T. R.* 537. The execution on Sunday of a warrant of justices of the peace for good behaviour is lawful under the statute. *Johnson v. Coltson*, *Sir T. Raym.* 250. So, also, a man may be arrested on a Sunday, under an escape warrant; and a gaoler may retake upon a Sunday, on fresh pursuit, a prisoner who has escaped from him. *Moore's Case*, 2 *Ld. Raym.* 1028. Time of arrest.

NOTE.  
Place of  
arrest.

No place affords protection to the person who has violated the criminal law. He may be arrested wherever he can be met with. *Bac. Abr. Trespass. D. 3.* In England this is strictly true, and in Ireland it is substantially so. The privilege of sanctuary has been wholly abolished in England by the 21 *Jac. 1, c. 28, Eng.*; but that statute never having been adopted in Ireland, it still nominally exists here, 16th *Rep. of Com. of Inq. 31*, except in cases of high treason. 28 *Hen. 8, c. 7, ante*. The privilege belongs, of common right, to every church and churchyard, for the space of forty days; and extends to all felonies except sacrilege, and to all inferior crimes except those committed by a sanctuary man within the sanctuary, or even out of it *sub spe redeundi*, 2 *Hawk. c. 32*. It seems that a person may be arrested in Ireland, on a charge of having committed, in a foreign country, an offence, which, by the laws of such country, subjected him to arrest. *Mure v. Kaye, 4 Taunt. 34*. A clergyman, although protected from arrest in civil cases; while performing divine service, or in going to or returning from church for that purpose, has no exemption in criminal cases. *Pitt v. Webley, Cro. J. 321*. The warrant of a justice to arrest for felony, may be executed in a franchise; for it is the king's suit, in which a *non omittas* is virtually included. 2 *Hale, 116*; 5 *Co. 92*. A constable without a warrant, or any private person, may break open the outer door of a house in which he has reason to suspect that murder is about to be committed. *Handcock v. Baker, 2 B. & P. 260*; or in which an affray is actually going on, 1 *Hale, 589*, in order to preserve the peace and prevent bloodshed. A constable is justified in entering a public-house at night in which he hears a noise, the door being open. *R. v. Smith, 6 C. & P. 136*. A private person knowing that treason or felony has been committed, or a dangerous wound given, may break open the house of the suspected criminal, in order to search for and seize him. 1 *Hale, 589*. And he may also break open the doors of any other person's house for a like purpose; but, in this latter case, the breaking is done at the peril of finding the criminal within. 5 *Co. 93*. When a constable knows that a felony has actually been committed, or receives positive information to that effect from another who has been witness to it, and the party suspected has taken refuge in a house, the doors may be broken. 1 *Hale, 589*. In breaking open the house of any other than the delinquent himself, the constable, like a private person, runs the hazard of being a trespasser, in case the party be not found within it. 5 *Co. 93*. If the outer doors are locked upon the officer or other person, after his entry to quell the affray or make the arrest, he may break them open in order to regain his liberty. *White v. Wiltshire, Cro. J. 555*. After a person has once been fully arrested, and escape, doors may be broken open in order to retake him. 1 *Hale, 459*. In all cases of misdemeanor, whether the party be acting with or without a warrant, it is necessary that he

should signify the cause of his coming, and make a demand of admittance before the outer doors can be lawfully broken. Even in cases of felony, it seems very doubtful whether this preliminary can be dispensed with. 5 Co. 92; *Launock v. Browne*, 2 B. & Ald. 592. Upon a warrant to search for stolen goods, doors cannot be broken, 2 Hale, 116; nor upon a writ of *excommunicato capiendo*, *Id. ibid.*; nor upon a general warrant, which expresses neither treason, felony, or surety of the peace. *Foster v. Hill*, 1 Bulstr. 146.

NOTE.

No person whatsoever, is exempt from arrest in criminal cases. Peers and members of parliament are subject to it in all cases of treason, felony, or actual breach of the peace, *R. v. Wilkes*, 2 Wils. 151; and also, by a resolution of both houses, when accused of a seditious libel. 11 Harg. St. Tr. 305. All other persons charged with, or suspected of any treason, felony, or even misdemeanor which subjects the delinquent to corporal punishment or imprisonment, are liable to be arrested. 1 Ch.

The persons subject to arrest.

*Cr. L.* 13; *Butt v. Conant*, 1 Br. & B. 548.

Arrests may be effected either with warrant, or without a warrant. In the latter case, they may be made either by a private person, or by an officer. In the former, they are always made by an officer, but vary according to the authority of the person making the warrant.

Every male person of full age, present at the commission of a felony, or when a dangerous wound is given, is bound to pursue and arrest the offender, and to give aid, when called on by a constable or other conservator of the peace, in the apprehension of a felon, suppressing an affray, or apprehending the affrayers, provided his interference take place before the affray is over. 2 Hale, 75; 2 Hawk. c. 12, ss. 1, 7. It is his duty also, to apprehend any person whom he sees attempting to commit a felony, and to detain him till he can be brought before a magistrate, or delivered to a constable. *Beal & Carter's Case*, 1 Leon. 327; 2 Hawk. c. 12, s. 19; *Bac. Abr. Trespass. D.* 3, pl. 55; *R. v. Hunt, Ry. & Moo. C. C. R.* 93; and see 9 Geo. 4, c. 55, s. 56, *ante* 10. But it is not necessary that the arrest should be effected at the very time of the attempt made. Thus, where a person saw the prisoner at midnight, in a board-house, from which timber was afterwards missed, and ran for assistance; but, upon his return, found that the prisoner, having left the house, had secreted himself in a neighbouring garden, where he was discovered; it was held that his apprehension there was lawful, the escape and pursuit being all one transaction. And it made no difference whether or not the felonious intention had been then abandoned. *R. v. Howarth, Ry. & Moo. C. C. R.* 207. In all cases where the law imposes it as a duty upon private persons to arrest offenders, it arms them for the occasion, with all the authority and protection of officers. Thus a person alarmed by cries, may justify breaking open doors to prevent the commis-

Of arrests by private individuals without warrant.

1. When enjoined.

NOTE.

sion of murder ; and he may detain the culprit until reasonably satisfied that he has changed his purpose, *Handcock v. Bates*, 2 B. & P. 260. So, when he sees a felony committed, or a dangerous wound inflicted, he may, in his pursuit after the offender, break open doors, and may detain him till probable danger from the wound has disappeared, 2 Hale, 77. If, in such a case, the felon should fly, he may be killed, if there is no other mode of securing him ; while, if the felon kill his pursuer, the offence will amount to murder, *Id. ibid.* The party who neglects the duty thus imposed on him by the law, is guilty of a misdemeanor, 2 Hale, 76.

When  
permitted.

Where a felony has been committed, a private person, upon reasonable and probable grounds of suspicion, may arrest, or direct a peace officer to arrest, the party suspected ; though he may prove innocent. But the party acts at his peril ; for, if no felony have been committed, the arrest will be illegal ; and if death occur on either side, the slayer will be guilty of manslaughter, 2 Hale, 79 ; *R. v. Dyson*, 1 Stark. R. 246. The same law is, if he break open doors in attempting to effect the arrest. 2 Hale, 82. The party who arrests, must be the one that entertains the suspicion ; for a person cannot justify an arrest by the command of another who suspects, unless all the grounds of suspicion have been previously communicated ; and then he may justify the arrest as upon his own suspicion. 2 Hale, 79, 80 ; *Bac. Abr. Trespass. D. 3, pl. 50.* Any man may arrest a lunatic or idiot who seems disposed to do mischief to himself or others, *Bac. Abr. Trespass. D. 3, pl. 57* ; or a thief, with the stolen goods in his possession, *Burn, J. Arrest* 11. (1.) ; and he may arrest persons actually fighting, or making an affray, and keep them in custody until their passions subside, *Bac. Abr. Trespass. D. 3, pl. 51* ; and then deliver them to a constable, who may carry them before a justice in order to their finding sureties of the peace, 1 Lamb. 130 ; 1 Hawk. c. 63, s. 11 ; but not even a peace officer can arrest for a mere breach of the peace after it is over, without an express warrant, *Bac. Abr. ibid. pl. 53* ; unless the party who has been guilty of the affray, shew a disposition to renew it, as by persisting in remaining on the spot where he had committed it ; in which case, any person may seize him and deliver him to a constable. *Timothy v. Simpson*, 1 Cr. M. & R. 757 ; *Ingle v. Bell*, 1 Mee. & Welsb. 516. Generally, a warrant is necessary to justify an arrest for any misdemeanor unattended with violence, as perjury or libel, *R. v. Wilkes*, 2 Wils. 151 ; or for any past misdemeanor whatsoever. *Fox v. Gaunt*, 3 B. & Adol. 798. Under the acts 9 Geo. 4, c. 55, s. 56, and c. 56, s. 35, ante 10, certain persons therein named, may, without warrant, arrest offenders against that act, and take them forthwith before a magistrate. And any person who, fairly and *bonâ fide*, believes that he is acting in pursuance of those acts, or either of them, by taking the party into custody, comes within the protecting clauses therein

NOTE.

contained, and cannot be sued without having a month's notice of action; *Beechey v. Sides*, 6 B. & Cr. 806: *Ballinger v. Ferris*, 1 Mee. & Welsb. 628. When a private person interferes in any case where his interposition is only permitted, not enjoined, he ought to give notice of his intention; after which, should any of the persons sought to be arrested be slain, it will be justifiable homicide. 1 *East P. C.* 304. But a formal notice is not necessary, when, from the circumstances of the case, the party must know why he is to be apprehended. *R. v. Howarth, Ry. & Moo. C. C. R.* 207. Accordingly, a game-keeper or other person lawfully authorized under the 9 Geo. 4, c. 69, s. 2, *ante* 305, may apprehend persons found offending against the first section of that act, without giving notice of his purpose. *R. v. Payne, R. & Moo. C. C. R.* 378. And this he may do although the offence be so heinous as to come within the provisions of sec. 9, *R. v. Ball, Ry. & Moo. C. C. R.* 330. If the game-keeper be killed, the offence will be murder, although he may have previously struck the offender, provided the blow has been given in self-defence only, and not vindictively to punish, *Id. ibid.* As to what are sufficient grounds of suspicion to justify an arrest by a private person, the following may be instanced:—the common fame of the country, if it have some probable ground; absconding; being seen with some traces of the crime, as bearing a bloody knife, or having blood upon the garments, when the offence is murder; or having stolen goods, in a case of theft; leading a vagrant life; associating with persons of bad reputation, and the like. 2 *Hawk. c.* 12, ss. 9—13.

When an arrest has been effected by a private person, his proper course to discharge himself of the prisoner is, within as short a time as circumstances will permit, to transfer him to the custody of a constable, or to bring him before a magistrate, 1 *Hale*, 589.

If a justice see a felony or other breach of the peace committed in his presence, he may either arrest the offender himself, or order any other person to do so, who is bound to obey, on pain of fine and imprisonment, 2 *Hale*, 86; or if there be any riot or breach of the peace likely to happen, he may prevent it, by ordering the parties to be arrested, *Id. ibid.* When a justice has so arrested a person, either by himself or by his verbal order, he may at once commit him to prison, *R. v. Wilkes*, 2 *Wils.* 158. If however, the magistrate have not been present at the actual commission of the offence, the party ought not to be committed, but upon due consideration of the evidence against him. And in such case, if the magistrate have any particular knowledge of the facts of the case, or of the offender, he ought rather to refer the matter to the decision of another magistrate, and appear before him as a witness; for a magistrate ought never to act as such in his own case, *Id. ibid.*; *Anon.* 1 *Salk.* 201.

Of arrests by conservators of the peace without warrant.

1. Justices.

## Of the Informations, and Arrest. [P. L.

By statute of *Westminster* 1, *ante* 455, the sheriff is not only enabled, but enjoined to arrest felons, and persons suspected of felony; and all persons are required to assist him, upon his summons, under pain of fine and imprisonment for neglect, 1 *Hale*, 87. If a sheriff be assaulted in the execution of his duty, he may arrest the offender and carry him before a magistrate, *Burn, J. Arrest*. III. So, he may arrest a freeholder who is making a noise, and disturbing the court held for the election of a knight of the shire, *Spilsbury v. Michlothwaite*, 1 *Tant.* 141.

3. A coroner being a conservator of the peace in relation to felonies, he may arrest or cause to be arrested all felons and suspected felons, 2 *Hale*, 88.

1ca. It may be remarked generally, that whenever a constable (who is the ordinary conservator of the peace,) is permitted to arrest, there he is also enjoined so to do; and can be punished upon indictment, by fine and imprisonment, for his neglect, 1 *Hale*, 90; 2 *Hawk.* c. 13, s. 7. He has full power to call upon any male person of the age of fifteen years or upwards, or so many as are proper, to assist him in making an arrest, 1 *Hawk.* c. 65, s. 11; and whatever protection the law affords to the constable himself, the same is extended to those acting properly in his aid. The chief difference between the power of a constable and of a private individual, is, that a constable may arrest upon the suspicion of others, while a private person can only act upon his own, *Samuel v. Payne*, *Dougl.* 359; *Holt v. Branscomb*, 3 *Campb.* 420. Also, in order to justify a private individual in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has actually been committed; whereas, a constable, having reasonable ground to suspect that a felony has been committed, is authorized to detain the party suspected, until inquiry can be made by the proper authorities, *Beckwith v. Philby*, 6 *B. & Cr.* 635; *Nicholson v. Hardwick*, 5 *C. & P.* 495. The constable may therefore, justify an arrest, although the offence may not have been committed. If the charge prove to be unfounded, the party who makes it, and not the constable, is answerable for it. A constable may arrest all persons guilty, or whom he shall reasonably suspect to be guilty, of treason, felony, breach of the peace, or of certain misdemeanors less than felony, which however, tend towards it, and may therefore, be called inchoate felonies, as the giving of a wound which may end in death or the like. *Burn, J. Arrest*. III. He may also interfere to prevent the commission of a felony or breach of the peace, and may arrest the parties who threaten it. 2 *Hale*, 94. And if, in any of the above cases, he or any of his assistants should be killed, the offence will be murder in all who take part in the resistance. 1 *East, P. C.* 303. But a constable is not authorized, without express warrant, to arrest a person for a bare breach of the peace or affray after it is over. *Bac. Abr.*

NOTE.

*Tresp. D. 3, pl. 53.* A constable may take into custody any person who assaults him, *Id. pl. 56*, or otherwise obstructs him in the execution of his duty, *Levy v. Edwards, 1 C & P. 40.* If a reasonable charge of felony or breach of the peace be made against any person, the constable is bound to take him, though the information be false. *Davis v. Russell, 5 Bingham. 354; Cowles v. Dunbar, 2 C. & P. 565.* And it is not necessary that a charge should be made with all the accuracy of an indictment. It is enough if, in reasonable intendment, it impute guilt to the prisoner. Thus a charge of "having forged notes in his possession" without more, is sufficient to warrant an arrest. *R. v. Ford, Russ. & Ry. 329.* But it seems that a charge of felony, made by an accomplice in the crime, is not sufficient to warrant an arrest, *Isaacs v. Brand, 2 Stark. R. 167.* Whenever the emergency of the case does not require immediate interference, it will be best for the constable to get a warrant. It is the general rule, that in all criminal cases, an arrest without warrant is a false imprisonment, *Bac. Abr. Trespass, D. 3, pl. 46;* and therefore, the cases in which it is enjoined or allowed either to private individuals or officers, are admitted as exceptions. Besides, the constable acting under a warrant, will be protected by the 43 Geo. 3, c. 143, s. 6, *ante 431*, if upon request he grant a copy of it. After an arrest, the constable should carry his prisoner, with as little delay as possible, before a justice of the peace, *Wright v. Court. 4 B. & Cr. 596.* If the time however, be unreasonable, as if the arrest have been effected at night, or on a Sunday, he may be secured in the best way the circumstances will allow, but, at the same time, using as little violence or severity as is consistent with his safe custody. *2 Hale, 119, 120.* If the party resist apprehension, or attempt to escape, he may be handcuffed, *Wright v. Court.*

Watchmen, patrols, and beadles, have authority to arrest and detain for examination, all night-walkers whom they shall reasonably suspect of felony, though there is no proof of a felony having been committed. *2 Hale, 98.* And if a party will not submit to such arrest, hue-and-cry may be levied against him, or he may be set in the stocks, or otherwise secured until morning. *Dalt. J. c. 104.* The proper way for these officers to discharge themselves of their prisoner, is either to hand him over to a constable, or to bring him before a justice. *Id. ibid.* But if, after apprehension, the officer shall find his suspicions to be unfounded, and that the party is of good name and fame, he may let him go, without being guilty of an escape. *Dalt. J. c. 159.*

Warrants to arrest are most commonly issued by justices of the peace; but there are other officers in the state who have a similar authority, e. g. any judge of the court of king's bench, *2 Hale, 5;* or of a court of oyer and terminer and general gaol delivery, *1 Hale, 579; R. v. Rudd. 1 Lea. C. C. 116;* Of arrests under warrant. — By whom warrants may be issued.



## NOTE.

the speaker of the house of lords, *R. v. Flower*, 8 T. R. 314; or commons, *R. v. Burdett*, 14 East. 1; a secretary of state, *R. v. Wilkes*, 2 Wils. 151; *R. v. Kendal*, 1 Ld. Rayn. 65; or one of the privy council, *Anders*. 297.

For what  
warrants  
may issue.

A justice of the peace may issue his warrant to arrest any person reasonably suspected of treason, felony, or any other offence against the peace, 2 Hawk. c. 13, s. 15; *Bel v. Conant*, 1 Br. & B. 548: but if the party have privilege of parliament, he is exempt in all cases of misdemeanors, save those which involve an actual breach of the peace. *R. v. Wilkes*, 2 Wils. 151. In trivial cases, and where there is no danger of the person's absconding, it would be deemed oppressive to issue a warrant in the first instance. It is usual then to precede it by a summons to appear at a certain day and place; and if this be disregarded, then the warrant is to issue. But in all cases, before a warrant is granted, the magistrate ought to examine the person requiring it, and his witnesses, on oath, or solemn affirmation if Quakers, Moravians, or Separatists. 4 Bl. Com. 298; 5 & 4 Will. 4, cc. 49 & 82. And if, upon such examination, it appear, either that the party has actually committed the offence imputed to him, or that there is reasonable suspicion attaching to him, the warrant should issue, and not before. 2 Hawk. c. 13, s. 18; *Morgan v. Hughes*, 2 T. R. 225; *Archb. on Com.* 3. The mode of taking the informations, as these depositions are called, is the same as that of taking the examinations or depositions, after the party has been arrested, and to which the reader is referred, *post*, C. II. After the examination of the accuser or witness is completed, it is read over to the party, and if he assent to its correctness, it is confirmed by his signature. 1 Ch. C. L. 31.

Of the infor-  
mations.

Of the sum-  
mons.

The summons should be signed by the magistrate who issues it and may either be directed to the party himself, or to a constable, requiring him to give notice to the party whose attendance is sought. *R. v. Steventon*, 2 East, 367. If the summons be obeyed, the person is bound to wait until the magistrate can attend to the complaint. 1 Ch. C. L. 32.

Of the form  
of the war-  
rant.

The county which is inserted in the margin is that in which the warrant is intended to be executed, and over which the jurisdiction of the justice extends. *Burn, J. Warrant* II. The judges of the court of king's bench who, *ex officio*, are general conservators of the peace over the whole of Ireland, do not teste their warrants of any particular county, but generally "Ireland, to wit." So also, in Dublin, all summonses and warrants issued from the various offices of police, are dated of the "police district of Dublin metropolis." To avoid the trouble of bringing up the parties, the warrants of judges usually direct that the party, when apprehended, shall be brought before some justice of the county, in which he shall have been arrested, to be dealt with according to law.

Constables are the known officers of justices of the peace, and bound generally to execute all warrants delivered to them. If an act of parliament require a justice to issue his warrant, without saying who shall execute it, that duty devolves upon the constable, *R. v. Wyatt*, 2 *Ld. Raym.* 1192. Distinctions were formerly taken between warrants addressed to constables by their particular names, and to constables generally. In the latter case, it was said that the constable had power to execute the warrant only within his own particular district, *R. v. Weir*, 1 *B. & Cr.* 288. But as to this, see the statute 5 *Geo. 4, c. 18, s. 6, ante* 461, by which, warrants addressed to constables &c., in their official character, are put on the same footing as warrants addressed to them by name. That statute does not extend to the warrants of judges, but is confined to those issued by justices of the peace, having a limited jurisdiction, *Gladwell v. Blake*, 1 *Cr. M. & R.* 636; and does not oblige, but only authorize the officer to execute a warrant out of his precincts, and within that of the justice who issued it, *Gimbert v. Coyney*, *M. C. & Y.* 469. Warrants may also be directed to sheriff or bailiffs, or to any indifferent person who is no officer; for a justice may authorize any one whom he pleases to be his officer; but no private person is compellable to execute a warrant, 2 *Hawk. c. 18, s. 27*. Neither can justices command the sheriff to execute a warrant, unless power so to do be specially given them by act of parliament, *R. v. Wyatt*, 2 *Ld. Raym.* 1192. If a warrant be directed to the sheriff, he may command his bailiff, under sheriff, or other sworn and known officer to serve it, without writing any precept. But if he will command another man that is no such officer to serve it, he must give him a written precept; otherwise an action of false imprisonment will lie, *Lamb.* 89. And every person to whom a warrant is directed, must personally execute it, though any one may lawfully assist him, 2 *Hawk. c. 18, s. 29*, but see 6 & 7 *Will. 4, c. 13, s. 16, ante* 437. A warrant directed generally, may be executed by any one person coming within the description. If it be directed to several persons by name, it may be executed by any one of them; but if it be directed to such persons jointly and not severally, an arrest by one is not legal, *Boyd v. Durand*, 2 *Taunt.* 161.

NOTE.  
By whom  
warrants shall  
be executed.

The officer having received his warrant, should proceed with all speed and secrecy to execute it, *Dalt. J. c. 169*; which is done by arresting the party charged, any where within the jurisdiction of the magistrate granting or backing the warrant, *Milton v. Greene*, 5 *East*, 233. If the warrant be for felony, it may be executed in any franchise within the county, 1 *Hale*, 116. A warrant, not being returnable at any particular day, may be executed at any time, provided the justice who grants or backs it, be alive at the time of its execution; and a person may be twice apprehended under the same warrant, if the purpose

Of the execution of the warrant.

## NOTE.

of his apprehension be not fully effected on the first occasion. *Dickinson v. Brown*, *Pea. N. P. C.* 234, 1 *Esp.* 218. But this is a practice which ought to be cautiously resorted to. As to what constitutes an arrest, see *ante* 463. A constable, if unable otherwise to effect the arrest, may call bynders to his aid. If the arrest have been effected by any other than the officer to whom the warrant is addressed, or whose name is indorsed thereon for its execution, 6 & 7 *Will.* 4, c. 13, s. 1, he ought at all events to be so near, as to be aiding in the arrest, although he need not be actually in sight, *Blatch v. Archer*, *Cowp.* 63; any one who obstructs an arrest under a criminal warrant is guilty of a misdemeanour, 1 *Ch. Cr. L.* 62.

If shewing  
the warrant.

It has been laid down by high authority, 2 *Hale*, 116, that the known officer of the district need not show his warrant, even though demanded; and that it is enough for him to say, "I arrest you &c., in the king's name." That doctrine has since come under the notice of the court, *Hall v. Roche*, 8 *T. R.* 187, and has been justly reprobated, as a most dangerous one; Lord Kenyon declaring it to be very important, in all cases where an arrest is made by virtue of a warrant, that the warrant (if demanded at least) should be produced. None of the authorities go so far as to say that the warrant need be exhibited even by a private person, unless demanded, 2 *Hale*, 116. The constable ought also to permit the party to read the warrant, and to take a copy of it if he wish, 43 *Geo.* 3, c. 143, s. 6, *ante* 431. If he refuse to return it, the constable may take it from him by force. *R. v. Milton*, 3 *C. & P.* 31.

If escapes.

If the prisoner, after being arrested under a warrant, should escape, he may be pursued and taken on fresh pursuit, even in another county, and out of the precinct of the officer; for the law adjudges him always to be in the officer's custody by virtue of the first arrest, *Dalt. J. c.* 169. But if he fly, before arrest, into another county, and the warrant be for misdemeanor not amounting to an actual breach of the peace, it seems the officer cannot pursue him out of the jurisdiction of the justice that granted or backed the warrant. But if the warrant be for felony or breach of the peace, he may be pursued and taken in any county. In such case however, he is to be brought before a justice of the county in which he is taken; for he is then not arrested purely by the warrant of the justice, but by the authority that the law gives to the officer; and the warrant is a sufficient cause of suspicion and pursuit, 2 *Hale*, 115. Persons who aid in rescuing a prisoner from the custody of an officer, entail upon themselves the punishment to which the party in custody may have been liable. Thus, if the principal be a traitor or felon, so is the rescuer; and if the principal be found guilty only of a misdemeanor, or not found guilty at all, yet the rescuer may be punished as for a misdemeanor in the obstruction of public justice, 1 *Hale*, 598. If the rescue be from the custody of an officer, the rescuer must at his peril take notice

If rescuing  
offenders.

the criminal arrest; but if in the custody of a private person, seems necessary he should have knowledge of the fact, before can be visited with the penal consequences, 1 *Hale*, 606. Here the offender, having been actually and lawfully arrested, if escaped or been rescued, the justice may grant a fresh warrant to all officers within his district, reciting the former proceeding, and the escape or rescue, and directing the apprehension of the offender, *Curtis's Case*, *Fost.* 135.

NOTE

The arrest having been effected, the officer ought to use reasonable diligence in bringing the prisoner before a justice, according to the exigency of the warrant. If the warrant authorize the prisoner's being brought either before the justice who granted the warrant, or any other of the same precinct (as in the form, post 8), the election lies with the officer, and not with the prisoner, *Water's Case*, 5 *Co.* 59. If the party be arrested at an unreasonable hour, as in the night, or be sick and unable to travel, or if there be present danger of a rescue, the officer ought to secure him, without any unnecessary harshness, until the first convenient opportunity for proceeding with him, 2 *Hale*, 119. When he hath brought him to the justice, yet he is, in law, still in his custody, till the justice either discharge or bail him, or till he be actually committed to the gaol by warrant of the justice, 2 *Hale*, 120. It is a very common practice with police constables, immediately upon an arrest, to search the prisoner, and to take from him every thing found on his person. But it is very improper to deprive the prisoner of his money, unless it be in some way connected with the charge against him, as he is thereby deprived of the means of making his defence, *R. v. Jones*, 6 *C. & P.* 343; *R. v. O'Donnell*, 7 *C. & P.* 138. A warrant ought never to state the time at which the party should be brought before a justice. The law has already fixed the time, by requiring that the officer shall carry his prisoner before the magistrate with all reasonable expedition, *Forbes*, 143. So, when the warrant commanded the arrest, to the end that the party should become bound to appear at the next sessions, these words were construed to mean the next sessions after the arrest, *Mayhew v. Parker*, 8 *T. R.* 110. The officer need not return the warrant to the justice, but only what he has done under it. He ought to keep the warrant for his own justification, *R. v. Wyatt*, 2 *Ld. Raym.* 1196.

Of bringing the party before the justice.

If the party against whom the warrant has issued should be already in custody, it will then become impossible for the officer to comply literally with the exigency of the warrant, by bringing the party before a justice, *R. v. Woodham*, *Str.* 628. His course is, to charge him criminally, by leaving the warrant with the keeper of the prison in which the party is confined, 1 *Ch. C. L.* 63. The warrant ought to be previously backed, if the prison be not within the jurisdiction of the justice who issued it. When the imprisonment is on civil process, the keeper of the prison, at its termination, hands the party over to a constable,

Of charging criminally a party in custody.

## NOTE.

by whom he is conveyed before, or transmitted to, a justice of the proper county, to be dealt with as in ordinary cases. *Id. ibid.* If the party be in custody on criminal process, a similar course may be adopted, as soon as he has become entitled to his discharge, either by acquittal, or endurance of punishment; or a magistrate may immediately attend in the goal, and take the examinations, as well of the prisoner as his accuser, to authorise his issuing a warrant of detainer to the keeper of the prison. But if, from the offence having been committed in another county, or for any other cause, it becomes necessary to have a prisoner, pending his lawful custody, removed for examination touching a criminal charge, the court of king's bench must be applied to, for a writ of *habeas corpus*, to warrant the proceeding, *R. v. Woodham*, *Str.* 828; *Ex parte Griffiths*, 5 *B. & Ald.* 730. The practice of taking examinations against a prisoner, and issuing a warrant for his detainer, without affording him an opportunity of rebutting the charge, appears alike inconsistent with common justice and the provisions of the statute, 9 *Geo.* 4, c. 54, ss. 2 & 3, *post* 486.

Of the description of the offender.

The name of the party to be arrested ought to be accurately stated, and should not be left in blanks to be filled up afterwards, 2 *Hale*, 114: though it is sufficient, if it be inserted at any time before the warrant is actually delivered to the officer for execution, *R. v. Winwick*, 8 *T. R.* 455; but see 7 & 8 *Geo.* 4 c. 67, s. 6, *ante* 426. It has been said that it is not usual to state any addition of residence or degree, in a warrant before indictment, 1 *Ch. C. L.* 40; but it should seem that if these can be accurately ascertained, they ought to be mentioned in the warrant, as they will be most important guides to the officer in discovering the individual meant. If the name be not known, the party may be described in the best way circumstances will permit, as,—“the body of a man whose name is unknown, but whose person is well known, and who is employed as the driver of cattle, and wears a badge, No. 573,” 1 *Ch. C. L.* 39. If the process be defective in the frame of it, as if there be a mistake in the name or addition of the person on whom it is to be executed; or if the name of such person, or of the officer, be inserted without authority, and after the issuing of the process; or the officer exceed the limits of his authority, and be killed; this will amount to no more than manslaughter in the person whose liberty is so invaded, *Fost.* 312; and any third person may interfere to prevent an arrest under it, doing no more than is necessary for that purpose, *R. v. Osmer*, 5 *East.* 304. If the offence have been committed by a married woman, without her husband's interference, the warrant should be only against her, *R. v. Taylor*, 3 *Burr.* 1679; but if both have been engaged in it, both ought to be apprehended and committed.

General warrants.

A general warrant to arrest all persons suspected, not naming them, is illegal; for it is the duty of the magistrate, and not of

the officer, to judge of the ground of suspicion, 2 *Hale*, 111; *Wilkes v. Wood*, *Lofft*. 18. So also, a warrant to apprehend persons guilty of a crime therein specified, is no legal warrant, 4 *Bl. Com.* 291. General warrants to take up all loose, idle, and disorderly people, seem to be the only exceptions to this rule, *Money v. Leach*, 3 *Burr*. 1766.

NOTE.

It is generally laid down, that it is not absolutely necessary that the charge or evidence should be set out in the warrant of apprehension; and that cases might occur, when it would be improper that the constable should know the crime of which the party to be arrested is accused, 2 *Hawk. c.* 13, s. 10; *R. v. Wilkes*, 11 *Harg. St. Tr.* 304. But notwithstanding, where such necessity for concealment does not exist, it is said that, regularly, the warrant ought to contain the cause specially, and should not be, generally, to answer such matters as shall be objected against him; because it cannot appear whether the matter be within the jurisdiction of a justice of the peace. And upon such a warrant returned upon *habeas corpus*, it is in the pleasure of the court of king's bench to bail or discharge. In warrants of the peace and good behaviour, the cause must be shown; that the party may come provided with his sureties, 2 *Hale*, 111; *Lamb*. 87. This reasoning would seem to apply equally to all cases of misdemeanor. In no case, is it requisite to set out more than the offence, and the particular species of it. The information, evidence, or grounds of the charge need not be set forth, *R. v. Wilkes*, 2 *Wils.* 158.

It is a misdemeanor at common law, for a constable charged with the execution of process, to refuse to execute it, 2 *Hawk. c.* 10, s. 35. So also, private persons who are called by a constable to give assistance in the execution of a criminal warrant, and refuse, are guilty of a contempt, for which they may be fined and imprisoned, 3 *Inst.* 158.

Every warrant of apprehension must be signed by the justice who issues it. It must also be sealed, if that be required by the act of parliament under which it is granted, *Padfield v. Cabell*, *Willes*, 411, *B. N. P.* 83: and as sealing can never vitiate a warrant, it will be safe to adopt the practice in all cases. The signing need not be a subscription. A warrant in the handwriting of the justice, beginning, "I, A. B. &c. do hereby, &c." would certainly be good, *Hilton v. King*, 3 *Lev.* 86. The time of issuing the warrant ought to be carefully inserted; so that if an action be brought for an arrest by virtue of it, it may appear to have been prior to the arrest, 2 *Hawk. c.* 13, s. 22.

Of signing and dating &c. of the warrant.

The practice of *backing* warrants, which, although in its origin it may not have been warranted by law, has now, after long experience of its utility, been sanctioned by several acts of parliament. When a supposed culprit cannot be ar-

Of backing warrants.

**NOTE** rested within the jurisdiction of the justice who grants the warrant, application is made to the justice of the county in which it is suspected he may be; and such justice, instead of taking new examinations and issuing a new warrant, inquires, by the oath of the officer, into the authenticity of the signature to the warrant; and this being proved, he must then adopt the proceedings taken, and give the warrant effect within his jurisdiction, by *backing* or *indorsing* it, *R. v. Kynaston*, 1 *East*, 117.

Of search warrants.

Before dismissing this subject, a few words may be said on search warrants; by the issuing of which, a clue is often afforded to the detection of offenders.

No such warrant ought to be granted without oath being first made, either by the actual owner of the goods, or some person entrusted with the care of them, that they have been actually lost, that he suspects they have been stolen, and that they are concealed in certain premises, with the grounds of his suspicions. A bare surmise is not enough, *Dalt. J.* 403; 4 *Inst.* 177. But he need not swear positively that a felony has been committed, *Elsee v. Smith*, 2 *Ch. R.* 304; 1 *D. & R.* 97. It is now agreed, that *general warrants*, or warrants to search all suspected places are illegal, the constable, and not the justice, being thereby made the judge of the reasonableness of the applicant's suspicions. The premises therefore, which it is intended to search, ought to be described with convenient certainty, 2 *Hale*, 150; 2 *Hawk. c.* 13. The warrant ought to be directed to a constable or other public officer, and not to any private person; though it is fit the party complaining should be present and assistant, because he knows his goods, 2 *Hale*, 150.

Of the execution of search warrants.

If the door be shut, and upon demand, not opened, it may be broken open; and so may boxes &c., after the keys have been demanded; and though the goods be not found, the officer will be excused: but if the party obtaining the warrant act maliciously, he is liable to an action on the case, *Cooper v. Booth*, 3 *Esp.* 135. It is proper that the warrant should express that the search be made in the day time; for under pretence of searches made in the night, robberies and burglaries have been committed, 2 *Hale*, 150. However, in cases not of suspicion only, but of positive proof, the injunction to search in the day time may be omitted, so that the warrant may be executed by night, lest the offender and goods should be gone before morning, *Barl. J. Sear. Warr.*

The officer must strictly observe the directions of the warrant; as if he be directed to seize only stolen sugar, and seize tea, he will be a trespasser, *Price v. Messenger*, 2 *B. & P.* 158. And where a constable, having a warrant to search for specific articles alleged to have been stolen, took away those and certain others

supposed also to have been stolen, but which were neither mentioned in the warrant, nor likely to be of use in substantiating the charge of stealing the goods specified, it was held that the constable was a trespasser, *Crozier v. Cundey*, 6 B. & Cr. 232. A warrant directing a search in certain premises, will not justify a search in any other premises, *Burn, J. Sear. Warr.* A searchwarrant for libels and other papers of a suspected party is illegal, *Entick v. Barrington*, 2 Wils. 275; *Money v. Leach*, 3 Burr. 1766, 1 Bl. Rep. 555

NOTE.

The warrant ought to command, that the goods found, together with the party in whose custody they are found, be brought before some justice of the peace, to the end that, upon further examination of the facts, the goods, and party in whose custody they are found, may be disposed of according to law, 2 Hale, 150: and the reason is, that the receiving of stolen goods carries with it a great presumption, that such receiving was to aid the thief; and besides, by the examination of the receiver, evidence may be gotten to discover the thief, 2 Hale, 150.

Upon the return of the warrant, the magistrate ought to inquire into the truth, by the oaths of persons on both sides, except the person who may appear to be implicated, and who ought not to be examined on oath. If the goods appear not to have been stolen, they should be restored to the possessor, and the party ought to be discharged. If the person, in whose possession they were found, appear to have stolen them, examinations ought to be taken against him, in order that he should abide his trial; and the goods should be handed to the police for safe custody, that they may be produced upon the trial, and that the party robbed may proceed by prosecution to obtain restitution of them. Should the party appear to have come innocently by goods which were really stolen, he ought to be bound over as a witness against the person from whom he received them, 2 Hale, 151-2.

The duty of the justice on return of the warrant.

County of S. } You are hereby required personally to  
to wit(a). } be and appear before me, J. P. one of  
his majesty's justices of peace for the county  
of S. [or, if in Dublin, say, before me, or any one or more  
of the divisional justices of the division, No. , in said district,  
at the divisional office in street,] on &c., at the

FORMS.  
(1)  
Summons.

(a) In Dublin, say, "Police District of Dublin Metropolis, to wit." The alterations pointed out in this form, may be adopted in all the subsequent ones when necessary.



FORMS.

hour of &c., to answer the complaint of &c., for &c., [proceed as in the warrant.] Herein fail not at your peril.

Given under my hand at the day of 183 .

J. P.

(2)  
Warrant.

County of S. } To all constables, and other peace officers, in and for the said county. These are to wit. } to command you, in his majesty's name, forthwith to apprehend and bring before me, or some other of his majesty's justices of the peace in and for the said county, the body of A. B. of &c., labourer, to answer to a charge of having [here state the offence; as, "feloniously murdered one C. D." or, "assaulted one C. D." or, "feloniously burnt a certain hayrick of one C. D."] Herein fail not at your peril.

Given under my hand [and seal] the day of 183 .

J. P. (Seal.)

(3)  
Form of  
backing  
warrant.

County of T. } Due proof on oath having been made to wit. } before me, one of his majesty's justices of the peace for the said county of T. that the name J. P. within subscribed is of the proper handwriting of such justice as is therein mentioned, I hereby authorize E. F. who brings me this warrant, and all other persons to whom the same is directed, to execute it within the said county of T.

Given under my hand [and seal] this day of 183 .

R. S.

(4)  
Search war-  
rant.

County of S. } To X. Y. [sub] constable of police in and to wit. } for said county. } Whereas it appears to me, by the information on oath of A. B. of &c., [yeoman] that he hath probable cause to suspect, and doth suspect that the following goods viz. [name the goods] have been feloniously stolen and carried away, off and from the premises of [the said A. B.] at in the county [aforesaid] and that the said A. B. hath probable cause to suspect, and doth suspect that the said goods, or part thereof, are concealed on the premises of C. D. of in the said county [yeoman]. These are therefore to authorize and require you, with suitable assistants, to enter, in the day time, into and upon the said premises of the said C. D., and there diligently to search for the said goods. And if

the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me or some other justice of the peace of the said county of S., to be dealt with according to law.

Given under my hand at \_\_\_\_\_ in the same county,  
the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

J. P. Justice of the Peace  
for the county of S.

## CHAPTER II.

### OF THE COMMITTAL, AND BAIL.

Sheriffs and gaolers shall receive all prisoners committed to them.

4 *Edw. 3, c. 10, Eng.* (2) That the sheriffs and gaolers shall receive and safely keep in prison from henceforth such thieves and felons(a), by the delivery of the constables and townships, without taking any thing for the receipt. And the justices assigned to deliver the gaol, shall have power to hear their complaints, that will complain upon the sheriffs and gaolers in such case, and moreover, to punish the sheriffs and gaolers if they be found guilty.

Justices of the peace shall imprison only in the common gaol.

5 *Hen. 4, c. 10, Eng. Item.* Because that divers constables of castles within the realm of England, be assigned to be justices of peace by commission of our lord the king, and, by colour of the said commissions, they take people to whom they bear evil will, and imprison them within the said castles, till they have made fine and ransom with the said constables for their deliverance; (2) it is ordained and established, that none be imprisoned by any justice of the peace, but only in the common gaol; saving to lords and others (which have gaols) their franchise in this case.

Persons arrested in one part of the U. K. for a bailable offence committed in another, may be there admitted to bail.

45 *Geo. 3, c. 92, s. 1.* Whereas by an act [13 *Geo. 3, c. 31, Eng.*] and also by another act [44 *Geo. 3, c. 92, acts 456,*] provision is made for the apprehending of offenders in England, Scotland, and Ireland respectively, so that such offenders may be apprehended in one of the said parts of the united kingdom, for offences charged to have been committed within either of the other parts of the same; and whereas there is no provision made in the said acts for admitting such persons to bail, who may be so apprehended for offences which by law are bailable. Be it therefore &c., that in case any person or persons shall be apprehended in one of the said parts of the united kingdom, for an offence which was committed, or charged to have been committed, in either of the other parts of the same, under any warrant indorsed in such manner as is in that respect provided by virtue of either of the said recited acts, such person or persons shall and may be taken before the judge or justice who indorsed the said warrant, or before some other justice or justices of the county, stewardry, city, liberty, town or place where the same was indorsed; and in case the offence be bailable in law, and such offender or offenders shall be willing and ready to give bail for his, her, or their appearance, according to the exigence of the said warrant, such judge or justice or

(a) *Viz.*—Those “taken and attached by the constables and townships.”

justices, by whom such warrant was indorsed, or before whom any such offender or offenders shall be brought, shall and may proceed with such offender or offenders, and take bail for him, her, or them, according to the exigence of the said warrant, in the same manner as the judge or justice who originally issued the same should or might have done; and such judge or justice or justices, so taking bail as aforesaid, shall take the recognizance or bail bond of the said offender or offenders, and of his, her, or their bail, in duplicate, and shall deliver one of such duplicates to the constable, or other officer or officers, or person or persons so apprehending such offender or offenders as aforesaid, who are hereby required to receive the same, and to deliver or cause to be delivered such recognizance or bail bond to the clerk of the crown, or clerk of the peace, or other proper officer for receiving the same, belonging to the court in which, by such recognizance or bail bond, such offender or offenders shall be bound to appear, and such recognizance or bail bond shall be as good and effectual in law, to all intents and purposes, and of the same force and validity, as if the same had been entered into, taken, or acknowledged before a judge or justice or justices of the peace of the county, stewardry, city, town, liberty, or place, where the offence was committed; and the said judge or justice or justices so taking bail as aforesaid, shall transmit the other of such duplicates to the court of Exchequer of such part of the united kingdom in which such bail shall be taken, there to be kept of record; and it shall and may be lawful for the court, in which any person so bound to appear shall forfeit his or her said recognizance or bail bond, to transmit a certificate, testifying the forfeiture thereof, under the seal of the court, or under the hand and seal of one of the judges or justices of the same, to the court of Exchequer, in that part of the united kingdom in which such recognizance or bail bond shall have been taken; and it shall and may be lawful for such court of Exchequer to proceed upon such certificate to levy the sum so forfeited, in the same manner in which they may proceed upon any recognizance or bail bond, taken and forfeited within the same part of the united kingdom, and estreated in due course into the said court: provided always, that if such offence be not bailable in law, or such offender or offenders shall not give bail for his, her, or their appearance, according to the exigence of such warrant, the said judge or justice or justices before whom such offender or offenders shall be brought, shall remand him, her, or them to the custody of the constable, or other officer or person who shall have apprehended such offender or offenders, and such constable, officer, or other person shall proceed to convey such offender or offenders into that part of the united kingdom wherein the offence was committed, by such ways and means as are provided by the said recited acts respectively.

45 G. 3, c. 92.

And duplicates of the bail-bond shall be executed, one of which shall be delivered to the constable, for the clerk of the crown, and the other shall be transmitted to the court of Exchequer in that part of U. K.

Who may proceed, in case of forfeiture, as herein.

Persons not bailable shall be remanded to the custody of the constable.

15 G. 3, c. 32.

Where the offence is not bailable, the justice who grants the warrant shall write "not bailable" on the face of the warrant.

Recognizances shall state the names and additions of parties bound.

Persons bound shall make oath as herein.

2. And whereas it may happen by reason of the difference in the law, prevailing in the said different parts of the united kingdom, that the judge or justice or justices before whom any offender or offenders shall be brought, under such warrant so indorsed, may not know whether the offence mentioned in such warrant be or be not bailable; for the better information therefore, of such judge or justice or justices in that particular, be it further enacted, that in case any person suing out such warrant shall shew, by affidavit or otherwise, to the satisfaction of the judge or justice granting such warrant, that it may be necessary to execute such warrant in a part of the united kingdom different from that in which such warrant is issued, and it shall appear also to the judge or justice granting such warrant, that it is granted for an offence for which it would not be lawful for any judge or justice or justices, before whom such offender or offenders might be brought, by reason of the indorsement of such warrant as directed by the said recited act, to admit such offender or offenders to bail, such judge or justice granting such warrant shall, upon the face of such warrant, write the words "not bailable;" and in all cases in which such words shall not have been so written, it shall and may be lawful for the judge or justice or justices, before whom any offender or offenders may be brought under such warrant so indorsed, to admit such offender or offenders to bail.

57 Geo. 3, c. 56(a), s. 2. That from and after the commencement of this act, every recognizance taken in Ireland, by or before his majesty's court of king's bench there, or by or before his majesty's chief justice of the said court of king's bench, or by or before any of the justices of the said court of king's bench, or by or before any justice or justices of oyer and terminer or gaol delivery, or by or before any justice or justices of the peace, either at their sessions of the peace or otherwise, or by any magistrate or other person lawfully authorized to take the same, shall contain the name and addition of the person or persons respectively thereby acknowledging himself, herself, or themselves respectively to be bound, and the name of the townland, parish, and barony or half-barony, or town or city, and street therein (if in a county of a town or city), in which the usual or actual place or places of residence of such person or persons is or are respectively situated; and all and every person or persons who shall hereafter come before his majesty's said court of king's bench, or before any of his majesty's justices of the said court, or before any such justice or justices of oyer and terminer or gaol delivery, or before any justice or justices of the peace, either at their sessions of the peace or otherwise, or before any magistrate or other person

(a) Entitled "An act to amend the laws in respect to forfeited recognizances in Ireland."

lawfully authorized to admit to bail, in order to give bail, or 57 G. 3. c. 56.  
be bound for the appearance of any person or persons charged  
with any crime or crimes, (which person so charged shall by  
law be entitled to bail,) or for keeping the peace, shall respec-  
tively make oath in one of the forms here following, or in some  
other form of words to the like import and effect respectively;  
that is to say, if such person shall reside in a county at large,  
in this form; (to wit,)

‘ I, *A. B.* do swear that I am a householder, and have a  
‘ house wherein I usually reside, at                      in the parish of  
‘ barony or half-barony of                      and county of  
‘ and that I support and maintain myself by                      and that  
‘ I am worth the sum of [*here insert double the sum in which*  
‘ *he or she is to be bound*] over and above all my just debts.  
‘ So help me God.’

And if such person shall reside in a county of a city or  
town, the words “reside at,” and from thence to “county of,”  
shall be omitted; and instead thereof, these words shall be  
inserted; (to wit) “residing in [*naming the street, square, lane,*  
*or place*] in the parish of                      and county of the city  
or town of                      ;” and every such oath shall be annexed  
to, or be written on the same piece of paper or parchment with  
the recognizance, and shall be signed by the person making  
the same, and attested by the proper jurat of the court, judge,  
justice, or other person taking the same as aforesaid, and shall  
be sufficient in lieu of all and every oaths and oath required by  
any law in force in Ireland, to be taken by any such surety.

Oath shall  
be annexed to  
recognizance.

3. Provided always, and be it enacted, that nothing herein  
contained shall extend, or be construed to extend, to require  
the person or persons charged with any crime, and for whose  
appearance any recognizance shall be about to be entered into,  
or any person or persons who shall become personally bound to  
keep the peace, or any person or persons who shall or may  
hereafter become bound for the prosecution of any person or  
persons charged with any criminal offence, to take such part of  
the said oath as relates to such person or persons being a  
householder, or to his, her, or their being respectively worth  
the sum or sums of money for which, he, she, or they is and  
are respectively about to be bound, over and above all their  
just debts; but every such last-mentioned person and persons  
shall, in like manner and form respectively, make oath as to  
the place, parish, barony or half-barony, and county, and the  
town or city, and street therein (if in a county of a town or  
city), in which he, she, or they usually or actually reside.

Prosecutors  
and parties  
accused shall  
be sworn  
only to resi-  
dence.

4. That all and every justice and justices of the peace, and  
all and every magistrate and other person lawfully authorized  
to take recognizances, who shall hereafter neglect or refuse to  
return the recognizances taken before him alone, or before him  
and any other magistrate or person or persons so authorized to  
take the same, in manner hereinafter mentioned, or shall neglect

Penalty on  
justices ne-  
glecting to  
return recog-  
nizances, to  
insert names,  
&c., or to ad-  
minister the  
said oaths.

57 G. 3, c. 56. or refuse to insert in any recognizance taken before him, solely or with any other or others as aforesaid, the proper name and names, and addition or additions, of the person or persons entering into the same, according to the provisions of this act, or shall neglect or refuse to administer the oaths respectively hereinbefore directed and appointed to be administered in manner so directed, shall for every such neglect or refusal (in addition to such sum as the judge or judges of assize may think fit at the respective assizes to impose upon any such justice and justices of the peace, or such magistrate or other person aforesaid, by way of fine for such neglect or refusal) forfeit the sum of fifty pounds, to be recovered against him by bill, plaint or information, in any of his majesty's courts of record in Dublin, by any person or persons who will prosecute or sue for the same; wherein no essoin, protection, or wager of law shall be allowed, or more than one imparlance shall be granted.

Sheriffs &c.,  
in taking  
prisoners to  
gaol, may  
pass through  
the adjoining  
county.

59 Geo. 3, c. 92, s. 3. That from and after the passing of this act, it shall and may be lawful for any sheriff in Ireland, and for any person or persons deputed by him, or acting under his authority, and for any constable or other peace officer in Ireland, or any other person or persons lawfully taken into or having in his, or their custody respectively, any person or persons offending against law, and whom he or they may or might lawfully convey to gaol, or any place of safe custody, to convey or take the said person or persons so in custody as aforesaid, into and through any part or parts of the said county or counties so adjoining, in their way to such gaol or place of safe custody within the county wherein such offence was done or committed; and all and every person or persons escaping from such custody as aforesaid, or aiding or assisting such escape or escapes, or rescuing such person or persons so in custody as aforesaid, shall be subject to the like pains and penalties for such escape or escapes, and for such aid and assistance so given as aforesaid, and for such rescue and rescues, as if the said escape or escapes had happened, or such aid and assistance had been given, or such rescue or rescues had been made in the county wherein such offence was done or committed.

Justices of  
towns &c.,  
not being  
counties, may  
commit offend-  
ers to the  
county gaol.

60 Geo. 3, & 1 Geo. 4, c. 14(a), s. 1. Whereas the trial of capital offences before justices of peace, within local and exclusive jurisdictions not being counties, may be attended with inconvenience, and it is desirable that some remedy should be provided for the same; be it therefore &c., that the justices of the peace acting within and for any town, liberty, soke or place, not being a county, but having an exclusive jurisdiction for the trial of felonies and misdemeanors committed within

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(a) Entitled, "*An act to remedy certain inconveniences in local and exclusive jurisdictions.*"

he same, shall from and after the passing of this act, have all power within their respective limits, at their discretion, to commit any person duly charged before them or any of them with any capital offence committed within such limits, to the gaol of the county within which such town, liberty, soke or place shall be situated, there to be tried at the next session of oyer and terminer or general gaol delivery, to be held in and for such county, in the same manner as if such offence had been committed within any other part of the same county, and as if such person had been committed by any justice of the same county, not being within such limits.

60 G. 3, & 1  
G. 4, c. 14.

2. That in all cases where any justice or justices of the peace, under the authority of this act, shall commit any person to the county gaol, it shall be lawful for such justice or justices, and he and they is and are hereby authorised and required, also to bind over all necessary parties and witnesses by recognizance, to prosecute and give evidence against such offenders at the next sessions of oyer and terminer and general gaol delivery, and to transmit such recognizance, and all depositions taken before him or them relating to the charge, to the clerk of the crown, clerk of assize, or other proper officer, to be filed in the court of oyer and terminer and general gaol delivery for such county, to the intent that the same may be used or put in force by the judge or judges of the said court, as he or they shall deem proper, according to law.

And may bind over witnesses to give evidence at assizes.

3. Provided always, and be it further enacted, that in all cases of any commitment to the county gaol, under the authority of this act, all the expenses to which the county may be put by reason of such commitment, together with all such expenses of the prosecution and witnesses as the judge shall be pleased to allow by virtue of any law now in force, shall be borne and paid by the said town, liberty, soke or place within which such offence shall have been committed, in like manner and to be raised by the same means whereby such expenses would have been raised and paid, if the offender had been prosecuted and tried within the limits of such exclusive jurisdiction; and that the judge, or court of oyer and terminer and general gaol delivery, shall have full power and authority to make such order touching such costs and expenses as such judge or court shall deem proper; and also to direct by whom, and in what manner, such expenses shall, in the first instance, be paid and borne, and in what manner the same shall be repaid and raised within the limits of such exclusive jurisdiction, in case there be no treasurer or other officer within the same, who by the custom and usage of such place ought to pay the same in the first instance.

Expenses of trial &c., shall be borne by the town &c., where offence committed.

9 Geo. 4, c. 54 (a), s. 1. Whereas it is expedient, with a

(a) Entitled, "*An act for improving the administration of justice, in criminal cases in Ireland.*"



1 G. 4, c. 54.

If a person be charged with felony, by strong evidence, before one justice, he shall be committed.

But if the evidence be not strong, he shall be brought before two justices, who may admit him to bail.

A justice need not hear evidence for the accused.

Duty and power of justices upon charge of felony.

view to improve the administration of justice in criminal cases in Ireland, to define under what circumstances persons may be admitted to bail in cases of felony; and to make better provisions for taking examinations, informations, bailments, and recognizances, and returning the same to the proper tribunals; and to relax in some instances the technical strictness of criminal proceedings, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defence; and to abolish the benefit of clergy, and some matters of form which impede the due administration of justice; and to make better provisions for the punishment of offenders in certain cases. Be it therefore &c., that when any person shall be taken on a charge of felony, or suspicion of felony, before one or more justice or justices of the peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as, if not explained or contradicted, shall, in the opinion of the justice or justices, raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such justice or justices in the manner hereinafter mentioned; but if there shall be only one justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody, and such person shall be taken before two justices at the least; and where any person so taken, or any person in the first instance taken before two justices of the peace, shall be charged with felony, or on suspicion of felony, and the evidence given in support of the charge shall, in the opinion of such justices, not be such as to raise a strong presumption of the guilt of the person charged, and to require the committal of such person, or such evidence shall be adduced on behalf of the person charged, as shall, in the opinion of such justices, weaken the presumption of guilt, but there shall, notwithstanding, appear to such justices, in either of such cases, to be sufficient ground for judicial enquiry into the guilt of the person charged, such person shall be admitted to bail by such two justices in the manner hereinafter mentioned. Provided always, that nothing herein contained shall be construed to require any such justice or justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such justice or justices to be meet and conducive to the ends of justice to hear the same.

2. That two justices of the peace, before they shall admit to bail, and one or more justice or justices, before he or they shall commit to prison, any person arrested for felony, or on suspicion of felony, shall take the examinations of such person, and the informations upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing; and

he two justices admitting to bail shall certify the bailment in writing; and every such justice shall have authority to summon any person within his jurisdiction, whom he shall have reason to consider capable of giving material evidence concerning any such felony or suspicion of felony, and to examine such person on oath touching the same; and to bind by recognizance all such persons as know or declare anything material touching any such felony or suspicion of felony, to appear at the next court of oyer and terminer or gaol delivery, or other court at which the trial of such offence is intended to be had, then and there to prosecute and give evidence against the party accused; and such justices and justice respectively shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause to be delivered the same to the proper officer of the court in which the trial is to be, before or at the opening of the court; and in case any person so summoned shall refuse to submit to such examination, or to enter into such recognizance, it shall be lawful for the justice or justices to commit such person to the public gaol of the county, city, or town, until such person shall submit to such examination, or shall enter into such recognizance, or be discharged by due course of law: provided, that no such examination shall subject the party examined to any prosecution or penalty, or be given in evidence against such party, save on any indictment for having committed wilful and corrupt perjury in such examination,

9 G. 4, c. 54.

3. That every justice of the peace, before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment shall certify the bailment in writing; and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver or cause to be delivered the same to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony.

Duty and power of justices upon charge of misdemeanor

The accused being arrested and in custody, should, as speedily as possible, be taken before a justice of the peace of competent jurisdiction, that he may be examined concerning the offence imputed to him, *Burn J. Examination I.* If the warrant direct that he shall be brought before the justice who

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Of conveying the prisoner before the justice for examination

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issued it, its exigency ought to be obeyed; but, in the absence of any such direction, he may be brought before any justice of the county that the officer may choose, 2 *Hale* 112. If, however, the party have been arrested under a backed warrant, he is to be taken, at his option, either before a justice of the county in which he was arrested, or of the county from which the warrant issued, *Burn J. Bail V.* If it be late in the evening, and no justice of the peace sitting in his public capacity, it is not reasonable, unless in crimes of a heinous nature, or under very peculiar circumstances, that a justice of the peace should be called upon immediately to examine into the charge, *Burn J. Examination I.* The party may, in the mean time, be kept in any secure place. The examination may be either public or private: but it may be observed, that all the proceedings must be in the presence and hearing of the accused; for if he have not an opportunity of cross-examining the witnesses, their evidence cannot afterwards be used against him. *R. v. Paine*, 5 *Mod.* 164; *R. v. Commins*, 4 *D. & Ry. M. C.* 42. This being only a preliminary investigation, counsel and attorneys may be excluded, if the magistrate think it right, *Cox v Coleridge* 1 *B. & Cr.* 37.

## Of the examination.

The magistrate's first duty is to inform himself of the nature of the charge, by a perusal of the warrant or otherwise; and then to call upon the witnesses for the prosecution to give evidence, *Arch. Com.* 9; who, if they do not attend, may be summoned, 9 *Geo.* 4, c. 54, s. 2, *ante* 486. In cases where it is likely that there may be any concert between them, and indeed in all cases, it is safe that they should be brought in singly for examination, and after the examination of each has closed, that he should be dismissed, so as not to allow of any communication with the witnesses who remain to be examined, 1 *Ch. C. L.* 80; *Taylor v. Lawson*, 3 *C. & P.* 543, and see 4 *C. & P.* 587 n. When the witness has appeared, and before swearing him, the magistrate ought to ascertain who and what he is, and the general nature of his testimony, *Burn. J. Examination II.* If he find him competent, he should then be sworn unless he be a Quaker, 9 *Geo.* 4, c. 32, *Moravian*, 3 & 4 *Will.* 4, c. 109, or Separatist, 3 & 4 *Will.* 4, c. 82, in either of which cases his affirmation will suffice.

If a magistrate should commit a party without having submitted the witnesses to the solemnity of an oath or affirmation, he would be liable to an action, if the prisoner were acquitted, *Morgan v. Hughes*, 2 *T. R.* 225, 231; 1 *Lea C. C.* 202, 309. The witness is then examined by the justice, and his depositions carefully taken down in writing, either by himself or his clerk. But before this is done, it may be advisable that he should detail the narrative in the common way of relating events; by which means, the justice will be put in full possession of all the circumstances of the case, and often enabled

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to discover, by the manner of the parties, whether they are speaking truth, or combining in the assertion of falsehood, *Ch. C. L. 77*. Should the witness exhibit any reluctance to give evidence, the magistrate ought to inform him of the purpose for which his testimony is required; or, in other words, that there is a person under charge, against whom he is required to give evidence; else, he cannot be punished for refusing, *Cropper v. Horton*, 4 *D. & Ry. M. C.* 42. He is then to reduce the examination of each deponent into writing, 1 *Lea. C. C.* 202. 309, in a plain and intelligible manner, and as nearly as possible in the language in which the first narrative was delivered, 1 *Ch. C. L.* 78. All facts and circumstances ought to be introduced, which are necessary to prove the offence with which the party stands charged; and the *corpus delicti*, as it is technically called, ought to appear on the examination. If this be done, the prisoner will not afterwards be discharged, on the ground of defect or informality in the warrant of commitment. And it is the constant practice for the court of King's Bench to remand prisoners in such cases, if it appear, on reading the depositions, that there is a fair ground to authorize them; and that there is no reason to doubt the truth of the fact charged, *R. v. Marks*, 2 *East* 157; *Ex parte Kruns*, 1 *B. & Cr.* 258. But the magistrate ought not to stop here. All the circumstances and bearings of the case should be extracted, in order that the witnesses may be thereby tied down to their narrative, and not left open to subsequent influence, *Dick. J. "Examination" I*; 1 *Ch. C. L.* 79. The importance of the magistrate's duty in this respect, has been much increased by the act, 6 & 7 *Will.* 4, c. 114, ss. 3, 4; whereby the party accused is enabled to have, before his trial, a copy of all depositions made against him. And it therefore becomes the justice to be very cautious that nothing material, which has been deposed to, be omitted, or in anywise misrepresented in committing it to paper; so that the prisoner may know what he shall have to answer at the trial, *R. v. Grady*, 7 *C. & P.* 650, and be protected against contradictory statements of the witnesses, *R. v. Coveney*, 7 *C. & P.* 667.

The depositions should be taken down in the very words used by the witness, or as near as possible to those words, and not in any law technicalities, or words not made use of by him. In almost all cases, it would be infinitely better if the depositions were taken in the first person, and that if, after the introductory part, the deposition proceeded to state, "*I saw, &c.*" instead of saying, "*he, this examinant,*" and "*he, this deponent,*" terms which many witnesses do not understand, and, perhaps, may conceive to mean some other person, *Carr. C. L.* 13. After the examination of each witness has concluded, it should be distinctly read over to him,

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in order that he may have an opportunity of correcting any thing that may be amiss in it. If he assent to its correctness, he should be called upon to sign it, in attestation of its accuracy. The magistrate should also sign it, *Dalt. J. c.* 164; 9 *Geo.* 4, c. 54, ss. 2 & 3, *ante* 486; but these signatures are not absolutely necessary; for the identity of the deposition may be proved by the clerk, whose presence is therefore desirable. *Dick. J. Examination III.* An examination thus taken may be given in evidence against the prisoner on his trial, if the deponent be dead, or unable to travel, from age or permanent sickness, 1 *Hale* 586; *R. v. Hogg*, 6 *C. & P.* 176: or where the informant himself gives evidence, it may be adduced to contradict his testimony, 1 *Ch. C. L.* 81; but it cannot be adduced before the grand jury, *Lea. C. C.* 514; neither can it be made evidence against any persons whom he may have incidentally accused, they not being present when it was made, 2 *Hawk. c.* 46, ss. 31—34. Every thing which is so stated before a magistrate is presumed to have been taken down in writing; and therefore, parol evidence of such statement is not receivable, unless it be first shewn that it was not so taken down, *Phillips v. Winburn*, 4 *C. & P.* 273. That, however, having been distinctly proved, the minutes taken by a solicitor for the prosecution, or the recollection of by-standers, have been appealed to, 2 *Lea. C. C.* 532, 637. When the direct examination of each witness has concluded, the prisoner should be called upon to cross-examine him, if he think it proper, as to the facts deposed to; and the answers of the witnesses to the cross-examination ought also to be taken down and returned to the court, *R. v. Potter*, 7 *C. & P.* 650, *n.* It frequently happens that the most important witness against a prisoner is an accomplice; and he is generally induced to give his evidence under a hope of mercy held out to him by the justice. But it should be well understood that a justice of peace, of himself, has no power to remit the punishment attached to crime. All that he can fairly promise is, that the accomplice shall be recommended as a fit object for the crown's mercy, provided he make a candid disclosure of all the facts within his knowledge, *R. v. Rudd*, *Cowp.* 331; *R. v. Lees*, *Russ. & Ry.* 361. He must, in all cases, remain in custody, until his case is disposed of, after the trial of the principal offender, *R. v. Beardmore*, 7 *C. & P.* 497.

Of the examination of the accused.

The case for the prosecution having closed, the prisoner is asked if he has anything to say against the charge. He will then have an opportunity of adducing witnesses in exculpation, (if the Justice, in his discretion, shall permit it, 9 *Geo.* 4, c. 54, s. 1, *ante* 486,) and of making observations upon it himself. If he bring forward witnesses, they are sworn and examined, and their testimony taken down, as on the case for the prosecution, 9 *Ann. c.* 6, s. 9; though formerly this was otherwise, *Dalt. J. c.* 165. When all the witnesses have been examined, if the magistrate conceive that even a slight

As soon as suspicion has been made out against the prisoner, it is his duty to interrogate him as to the charge, *Fortes*, 142; *Burn. J. Examination V.*; 9 *Geo. 4. c. 54*, ss. 2 & 3; in doing which, it ought always to be borne in mind, that this examination is intended by the law as a privilege in favor of the accused, so that, if innocent, he may at once free himself from suspicion, and regain his liberty, 1 *Ch. C. L.* 84. He ought therefore, to be allowed to speak freely, and must not be pressed to answer, like a common witness, *R. v. Wilson* *Holt. N. P. C.* 597. And the magistrate should be careful to inform him, that any statement which he makes, may be used in evidence against him; and that he is not to hope for any favor, though he should confess the crime. But he is not to dissuade him from confessing; as this would be closing up one of the sources of justice, *R. v. Green*, 5 *C. & P.* 312.

NOTE

A confession obtained by the holding out any inducement, whether it be a promise or a threat, cannot afterwards be given in evidence against the prisoner; from an uncertainty which must always attend it, whether it was not made rather from a motive of fear or interest, than a sense of guilt, 1 *Ch. C. L.* 85; *R. v. Cooper*, 5 *C. & P.* 535, and see *Archb. Pl. & Ev.* 117. As instances of the rule, the following cases may be cited:—A constable said to his prisoner, “It is of no use for you to deny it, for there is the man and boy who will swear they saw you do it:” the confession afterwards made was rejected at the trial, *R. v. Mills*, 6 *C. & P.* 146. So, where the confession was procured by saying, “you had better split, and not suffer for all of them,” *R. v. Thomas*, 6 *C. & P.* 353; or, “it would have been better for you, if you had told at first,” *R. v. Walkley*, 6 *C. & P.* 175; or, “you had better not add a lie to the crime of theft,” *R. v. Shepherd*, 7 *C. & P.* 579; or, “if you will not tell, we can do nothing,” *R. v. Partridge*, 7 *C. & P.* 552. But in order to exclude a confession, the inducement must have been of a description which may be presumed likely to have had that effect upon the mind of the accused. If therefore, it be made to a fellow prisoner, whom he has strictly enjoined to keep it secret, *R. v. Shaw*, 6 *C. & P.* 372; or if it be made, after receiving a suitable caution, *R. v. Howes*, 6 *C. & P.* 404, or after expressions which, in themselves, are not calculated to have an improper influence upon him, as when it was said by a constable to his prisoner, “this is a bad job,” *R. v. Kelly*, *Trim Lent Assizes*, per *Bushe, C. J.*; or, that there was a very serious oath laid against him, *R. v. Long*, 6 *C. & P.* 179, or an admonition given by the committing magistrate, “to be sure to tell the truth,” *R. v. Court*, 7 *C. & P.* 486; or the like: or if the hopes held out be only of a trifling indulgence, as liberty to receive the visit of his wife, *R. v. Lloyd*, 6 *C. & P.* 393; to be relieved from handcuffs, *R. v. Green*, 6 *C. & P.* 655, or the like, the confession will be received in evidence against him. So also, what he has been overheard to

Of confession.

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Of swearing  
the prisoner.

say to his wife, or even to himself, is receivable in evidence against him, *R. v. Simons*, 6 C. & P. 540.

The prisoner must not be sworn, 1 *Hale*, 585, *B. N. P.* 284; and if his examination even *purport* to have been taken on oath, it cannot be used at the trial; as evidence will not be there admissible to show that the prisoner was not sworn, *R. v. Smith*, 1 *Stark. R.* 242; *R. v. Bentley*, 6 C. & P. 148. Anything said by the prisoner when sworn, and when he believed himself to be speaking as a witness, cannot afterwards be used against him. Thus, where several persons were summoned before a magistrate, and examined on oath respecting the poisoning of a female; no person was then specifically charged with the offence, but at the conclusion of the examination, one of the witnesses was committed for trial; the statement which he had made was held not to be receivable in evidence, *R. v. Lewis*, 6 C. & P. 161; *R. v. Davis*, 6 C. & P. 177. But if the statement have been made upon a different occasion from that on which the party was committed, *R. v. Walker*, 6 C. & P. 162, and when no suspicion attached to him, *R. v. Tubby*, 5 C. & P. 530, it may be given in evidence against him. So also, when the prisoner was sworn by mistake, he being supposed to be a witness; as soon as the mistake was discovered, the deposition which was begun, was destroyed, and the prisoner cautioned; a statement made afterwards, was received in evidence, *R. v. Webb*, 4 C. & P. 564. The reason which has been assigned for the law's strictness in rejecting the statement of a prisoner on oath, is, that every admission, in order to render it available, must be purely voluntary; and that the dread of perjury, with the apprehension of additional penalties, in case he deviates from the truth, may create an influence upon his mind, which the law is particularly scrupulous in avoiding, 1 *Ch. C. L.* 86. The prisoner's statement ought to be carefully taken down in writing, and afterwards read over to him. If he admit its correctness, he ought, for precaution, and for the facility of future proof, to be called on to sign it. His refusal however, will not be very material, as the paper, although it cannot be read in evidence, *R. v. Telicote*, 1 *Stark. R.* 483, unless he admit its correctness, *Lamb's case*, 1 *Lea. C. C.* 625, may afterwards be used by the magistrate, or his clerk, as a document to refresh the memory, when he gives oral evidence of the confession upon the trial. *R. v. Pressley*, 6 C. & P. 183; *Dewhurst's case*, *Lew. C. C.* 47; *R. v. Jones*, *Carr. C. L.* 13. At all events, the magistrate ought to sign it, in order to prove its identity, 9 *Geo.* 4, c. 54, ss. 2, 3, *ante* 486. In the absence of the magistrate and his clerk, the statement may be given in evidence, upon proof, by any one who was present, of the signature of the magistrate, and also of that of the prisoner, *R. v. Rees*, 7 C. & P. 568, or, if he have not signed it, that it had been read over to him, and that he admitted its correctness, *R. v. Reading*, 7 C. & P. 649.

If the examination of the prisoner be taken down in such form, that it cannot be discovered from anything on the face of the paper, that, at the time of the statement made, the prisoner was under examination upon a criminal charge, such examination can only be used as a memorandum to refresh the memory of the magistrate, or his clerk, *R. v. Tarrant*, 6 C. & P. 182.

NOTE

If more than one person be accused, each should be examined apart from the rest, in order that variations in their statements may the more easily be detected, 1 Ch. C. L. 83. It may be observed also, that what one prisoner says, in the presence and hearing of another, is not evidence against such other person, even although he suffer it to pass uncontradicted, *R. v. Appleby*, 3 Stark. R. 33, Lew. C. C. 47.

Many circumstances, as the absence of witnesses &c., may render it highly inexpedient that the case of a prisoner should be disposed of at once. The magistrate has therefore a discretionary power of remanding the prisoner, and bringing him forward, that the case may be further inquired into, as often as he considers it necessary for the ends of justice, *Davis v. Capper*, 10 B. & Cr. 28. But the time for which a prisoner may be remanded to custody, must be always a reasonable time, to be determined by the circumstances of each particular case: sixteen days have been held unreasonable, *Davis v. Capper*; and three days to be reasonable, *Scavage v. Tateham*, Cro. Eliz. 829. It has therefore, become the practice in well regulated offices, to remand the prisoner, when necessary, for a space of time not exceeding three or four days. At the end of that time, he is again brought forward for examination, and if requisite, he may be again remanded. The magistrate ought to be very careful to interpose no unnecessary delay; and that the commitment be *bona fide* for re-examination, and not to extort a confession, or the like, *Davis v. Capper*. He should take care to have the witnesses summoned, who may otherwise refuse to appear, 9 Geo. 4, c. 54, s. 2, and the examination brought to a close with all reasonable expedition; for an action of trespass may be maintained against a magistrate for committing for further examination, if his view and purpose in so doing were to put the party under the same hardship and oppression as would belong to a commitment for custody in order to trial, *Arbuckle v. Taylor*, 3 Dow. 184. A commitment for re-examination is good, though made by verbal order only, *Broughton v. Mulshoe*, Moo. 408; *R. v. Gooding*, Burn. J. Examination VIII. n.; but when such commitment is for more than a single day, it is better that it should be done by warrant in writing, *Burn. J. Examination VIII*. The prisoner may, for such purpose, be continued in the custody of the officer, or may be detained in the justice's house or committed to some near safe place of custody, till the final examinations can be completed, 1 Hale, 585; *Broughton v.*

Of remanding for further examination.



NOTE. *Mulshoe, Macc.* 408. But magistrates have no authority to detain a person known to them, till some other person makes a charge against him. Before they detain a known person, they should have a charge actually made, *R. v. Birnie*, 5 C. & P. 206.

If, upon the examination of the whole matter, it manifestly appear, that either no such crime was committed by any person, or that the suspicion entertained of the prisoner was wholly groundless, it is lawful for the magistrate totally to discharge him, without even requiring bail, 4 *Bl. Com.* 296; 2 *Hawk. c.* 13, s. 1; but in modern practice, it is not usual for the justice so to act, unless he believe the charge to have been malicious as well as groundless, 1 *Ch. C. L.* 89. If there be an express charge of felony against a prisoner, or of homicide, under whatever circumstances committed, he cannot be discharged, 2 *Hale*, 121. If the magistrate should be of opinion that the prisoner ought to undergo a trial, it then becomes his duty to bind over the proper persons to prosecute and give evidence on behalf of the crown, and to bail or commit the prisoner for trial.

The person who is usually selected to be the prosecutor, is the one principally affected by the crime which has been committed, and who therefore, may be supposed to have the greatest interest in bringing the offender to justice, 1 *Ch. C. L.* 1. Upon him devolves the duty of preferring the indictment; and generally, he is entrusted with the carriage of the whole process. *Id. ibid.* All persons whatsoever, even infants and married women, are capable of being prosecutors, unless incapacitated from some cause which renders them incompetent as witnesses in criminal cases. *See Archb. Pl. & Ec.* 144. An individual who, for the purpose of detecting an offender, has afforded him an opportunity, or even held out a temptation to him to commit a crime, is not thereby disqualified from prosecuting, *R. v. Holden*, 2 *Taunt.* 334, *Russ. & Ry.* 151; *R. v. Egginton*, 2 *B. & P.* 508. unless the offence be destroyed by the consent of the party thereto; as in case of a robbery, where it is essential that the property should be taken violently, and against the will of the owner, 2 *Lea. C. C.* 616.

As it is the solemn duty imposed by law on every person, to take active steps for the apprehension and bringing to justice of a person reasonably suspected to be guilty of a crime; so, no one can lawfully refuse to enter into a recognizance to prosecute or give evidence, when properly required by a justice; to whom a power is entrusted, of committing to prison, any person who so refuses, 1 *Hale*, 586; 2 *Hale*, 282; 9 *Geo.* 4, c. 54, ss. 2 & 3. But a justice cannot commit a person to prison, who refuses to procure another person to join him as security in the recognizance. The party's own

recognizance is all that ought to be required, 2 *Burn, J. Examination XI*. If more persons than one are to be bound over to prosecute, the recognizances ought not to be taken separately. *Id. ibid.* But the practice is different, with respect to recognizances to give evidence only.

NOTE.

Infants and married women, who cannot themselves be bound, ought to procure some person to become bound for them, or, in case of refusal, may be committed, *Bennet v. Watson*, 3 *M. & S.* 1.; but the recognizance of an infant who has attained to years of discretion, *e. g.* sixteen, will not be discharged, if forfeited and estreated, unless a proper case for relief be made out, *Ex parte Williams*, 13 *Price* 670, *M. Clel.* 493. It would seem therefore, that such a person is competent to enter into a recognizance to prosecute or give evidence. The usual mode of taking a recognizance is for the justice to address the party, and say:—"You, *A. B.* acknowledge to owe to our sovereign lord the king, the sum of £ , and you, *C. D.* acknowledge to owe to our sovereign lord the king, the sum of £ , to be levied of your respective goods and chattels, lands and tenements, for the use of our said lord the king, his heirs and successors, if default shall be made in the condition following, that is to say;—if you the said *A. B.* shall make default in appearing at the next assizes [or general sessions of the peace in the division of ] in this county, and there [causing a bill of indictment to be preferred, and (a)] giving evidence before the grand and petit juries against the said *A. Y.* for the offence of &c."

The recognizance is a matter of record as soon as it is taken and acknowledged, although it be not made up till afterwards, *Dalt. J. c.* 168; *Hull v. Winckfield*, *Hob.* 195; *R. v. Bingham*, 3 *Y. & J.* 111. But justices have usually blank forms of recognizances, which are filled up according to the exigency of the case; and from which, when so filled up, he takes the acknowledgment of the party. It is not uncommon for the justice merely to mark at the foot of the examination, "*A. B. in £ to appear, [&c.]*" and from this short note, to make up a record afterwards, if necessary. *Barl. Rec.* 454. The recognizance, when made out on paper or parchment, need not be signed by the party, but only by the justice: sealing is not requisite. *Id. ibid*; *Dalt. J. c.* 176; 9 *Geo* 4, c. 54, s. 2.

The justice should take care that all informations, examinations, and recognizances taken before him, be safely transmitted to the proper officer, pursuant to the 6 & 7 *Will.* 4, c. 34, *ante* 426. He should also return to the judge any confession taken down, as made by a prisoner; and it is no excuse for not doing so, that the confession was wanted to be

Of returning the examinations.

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(a) These words are used to the prosecutor only.

## NOTE.

sent before the grand jury, *R. v. Fellows*, 5 C. & P. 508. If the prosecutor and witnesses do not appear when called on, the court may order the recognizances of defaulters to be *estreated*, i. e. extracted, or drawn from among the records of the court, and returned into the court of Exchequer by its officer, 57 Geo. 3, c. 56, s. 4; out of which Court process issues from the chief remembrancer's office, 5 & 6 Will. 4, c. 55, s. 11, against the party, to levy either the whole amount of such recognizance, or such lesser sum as the judge may have thought proper at the trial to order, as being a sufficient punishment for the default, 9 Geo. 4, c. 54, s. 34.

## Of bail.

The magistrate having heard the examinations, and ascertained that the party accused is not entitled to be completely discharged, is next to determine whether he shall bail or commit him. Bail is the delivery of a person to his sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody, instead of going to prison, 1 Ch. C. L. 92. If the offence be a misdemeanor, the accused may insist on his being admitted to bail (unless bail be ousted by a special statute, 2 Hale, 127); and then the only question is, as to the amount and solvency of the sureties. If the offence amount to high treason, a justice cannot bail, but must commit the party to close custody, 2 Hale, 134. In cases of felony, if a justice sitting alone, think the prisoner ought to be committed, he may forthwith proceed to make out his committal accordingly; but if he think the offence bailable, within the meaning of the 9 Geo. 4, c. 54, s. 1, he should order him to be detained until the attendance of two justices can be procured. If the two justices should concur in the propriety of admitting him to bail, they will, of course, make an intimation to the prisoner to that effect, together with the amount of bail required.

Unless bail be tendered within a reasonable time, the justice may proceed to commit the party to gaol. He is not bound to demand sureties, or to forbear committing until they are found, but may well justify a commitment either in felony or misdemeanor, unless the party shall offer his sureties, 2 Hale, 123; 2 Hawk. c. 15, s. 14. Even after committal, and at any time before trial, he may be released from imprisonment, if the offence be bailable, upon his finding sufficient sureties, *Burn, J. "Bail" VII.* The number of sureties required by justices of the peace ought not to be less than two, 2 Hawk. c. 15, s. 4. The amount for which each becomes bound with his principal, is usually one-half of that in which the principal himself is bound. This latter sum is regulated by the rank and wealth of the prisoner, the enormity of the offence, and the degree of guilt attaching to him, 2 Hale, 125. The bail must be housekeepers of ability, each sufficient to answer the sum in which he is bound. A mar-

ried woman, or a person convicted of an infamous crime cannot be bail, *R. v. Edwards*, 4 *T. R.* 440; *Burn, J. "Bail" VI.* The attorney of the prisoner may be one of his bail, *R. v. Bowes*, *Dougl.* 466, *n.* And it is said that a justice may take money in lieu of bail, in cases of surety of the peace, *Moyser v. Gray*, *Cro. Car.* 446.

NOTE.

When bail is offered, it is the duty of the justice to examine them upon oath, as to their being housekeepers, and as to their general sufficiency of property, 2 *Hale*, 125. In general, no notice of bail is requisite; but justices may, if they think fit, (and in strong cases, it is usually done,) order that a reasonable notice of bail, usually twenty-four or forty-eight hours, according to circumstances, shall be given to the prosecutor, to enable him to inquire into the stability of the persons offered, *Burn, J. "Bail" VII.* If either be insufficient, both must be rejected, *Archb. Com.* 16. Refusing reasonable bail, when offered for a bailable offence, is an indictable misdemeanor, 2 *Hawk. c.* 15, *s.* 13, and by the declaration of rights, 1 *Will.* 3, *sess.* 2, *c.* 2, *Eng.*, requiring excessive bail, amounts to a denial of bail. The justice having learned that the sureties are sufficient, and having sworn them as to their names, additions, and residences, pursuant to the 57 *Geo.* 3, *c.* 56, *ante* 483, proceeds to take the recognizance of bail. This is done in the same way as binding over a prosecutor, *ante* 495, with the exception of the statement of the condition. If the party accused be a married woman, or an infant under twenty-one years of age, or be in gaol, and therefore, necessarily absent, the recognizance is taken only from the sureties, 2 *Hale*, 126. Upon the recognizance being taken, if the defendant have appeared voluntarily, or if he be in custody of the constable, the justice discharges him as of course; but if he be in prison, he issues a warrant for his deliverance.

After a party has been bailed, his sureties, who are considered as his keepers, if they fear his escape, or for other reason wish to discharge themselves, may retake him in any place, and at any time, even on a Sunday, and have him brought before a justice, that he may be committed: and in so doing, they may command the co-operation of the sheriff and any of his officers, *Anon.* 6 *Mod.* 231. But the party is at liberty to find new sureties, 2 *Hawk. c.* 15, *s.* 3. The bail are not entitled to have the recognizance discharged, without submitting to pay all costs incurred, *R. v. Lyon*, 3 *Burr.* 1461.

How bail may discharge themselves.

If the principal, having been bailed, do not appear pursuant to the exigency of the condition, the recognizance is forfeited, 2 *Hawk. c.* 15, *s.* 84. And where the recognizance required the defendant's appearance in the King's Bench, on the first day of term, to answer a particular information, and not to depart until discharged by the court, and afterwards the attorney

How the recognizance of bail may become forfeited.

## NOTE.

general entered a *nolle prosequi* as to that information, and exhibited another, his refusal to appear in court, after notice of his conviction on the second, was held a forfeiture of the recognizance, *R. v. Ridpath*, 10 *Mod.* 152. The defendant and his bail cannot be called on their recognizances, except on the day on which he is bound to appear: if he is called on any other day, notice must be given of the intention, *R. v. Adams*, *Rep. Temp. Hardw.* 237. And see 5 & 6 *Will.* 4, c. 48, s. 3, *ante* 168. If the recognizance be forfeited by non-appearance of the principal, and the bail pay the penalty, yet the principal continues amenable to the law when he can be taken; and the bail may sustain an action against him for money paid, to recover the amount of the penalty, *Burn, J. "Bail" XV; 2 Ch. Pl. 5 Ed.* 319, *n.*

Of the power  
of justices to  
commit.

A magistrate, who has power to examine the defendant, has also, in general, as incident to his office, power to commit him, *R. v. Kendall*, 1 *Ld. Raym.* 66. The privy council, secretaries of state, and some other persons in authority, have also the power of committing for treason and other offences affecting the public, *R. v. Despard*, 7 *T. R.* 736. Justices of the peace, as we have seen, have no power to take bail in cases of high treason, *ante* 496; but it is their duty to commit. So also, if the offence charged be a non-bailable felony; or a bailable felony or misdemeanor, and no sufficient bail tendered, 2 *Hawk. c.* 16, s. 1. They have also a power to commit any person in Ireland who is charged with an offence committed in England or Scotland, in order to be sent over there to take his trial, *R. v. Kimberton*, *Str.* 848; *R. v. Mure*, 4 *Taunt.* 34. In every instance, the justice should be careful, before commitment, to see that a *prima facie* case has been made out against the prisoner, by witnesses entitled to a reasonable degree of credit, *Cox v. Coleridge*, 1 *B. & Cr.* 50.

Of the form  
of the com-  
mittal.

The magistrate's warrant of commitment is usually directed both to the constable and gaoler, directing the former to convey the prisoner into the custody of the gaoler; and the latter to receive and keep him, *Burn. J. "Commitment" IV.* It may be either in the name of the king or of the justice, 2 *Hawk. c.* 16, s. 14; but most commonly the latter. When in the king's name, it assumes pretty nearly the form of a legal writ, tested by the justice. The prison to which the party is to be carried, must be distinctly specified. It is not enough to direct him to be carried to prison generally, *R. v. Smith*, *Str.* 934. The commitment ought in the first instance to be to the proper prison, which is, ordinarily, the county gaol or district bridewell; as the prisoner can afterwards only be removed by habeas corpus, or other legal writ, 21, 22 *Geo.* 3, c. 11, s. 8. The Prisons' act, 7 *Geo.* 4, c. 74, s. 92, empowers the lord lieutenant to select a bridewell in each division of every county in Ireland, to be

called the district bridewell ; and enacts that all prisoners committed within such district, either for trial at, or under sentence passed by, the court of quarter sessions, shall be kept and remain in such district bridewell, and shall not be transmitted to the county gaol, unless some order to that effect shall be made by competent authority. If the mittimus require that the party shall be confined in a certain prison, it would be a false imprisonment to confine him in any other, *Swinstead v. Lyddal*, 1 *Salk.* 408.

NOTE.

The gaoler, upon sight of the mittimus, is bound to receive the prisoner, 4 *Edw.* 3, c. 10, *ante* 480; *Brandling v. Kent*, 1 *T. R.* 60. If he refuse, he is punishable by the justices of gaol delivery ; and, in such case, the constable ought to bring the party again before the justice, in order that he may be committed to some other prison or place of safe custody until the next gaol delivery, *Dalt. J.* c. 170. The gaoler is protected from responsibility, if he should receive, by mistake of the constable, a person whom it was not intended to confine, *Sir T. Jones*, 214; *Gahan v. Maingay, Jr.* *T. R.* 74; although a contrary doctrine seems in one case to have been held, *Aaron v. Alexander*, 3 *Campb.* 35.

The mittimus must contain the cause of commitment, *Com. Dig. Imprisonment, H.* 6; and briefly, and with convenient certainty, set forth the nature of the offence charged, 2 *Hawk. c.* 16, s. 16. But it need not be stated, although it is safe to do so, that the charge was made on oath, *R. v. Wilkes*, 2 *Wils.* 158; for, perhaps, the committal was upon the magistrate's view, 1 *Lea. C. C.* 167; and a commitment by a secretary of state for high treason, may be made without oath, *R. v. Windham, Str.* 2. The statement of the offence need not be made with all the accuracy of an indictment, *R. v. Remnant*, 5 *T. R.* 170; or of a commitment in execution, *R. v. Gourlay*, 7 *B. & Cr.* 669. The information, evidence, or grounds of the charge need not be set forth, *R. v. Wilkes*, 2 *Wils.* 158; nor, if for felony, need it state that the act was done *feloniously*; but so much ought to be stated, that it may sufficiently appear to the court of King's Bench, whether the offence amounts to felony, *R. v. Judd*, 2 *T. R.* 255. And if the facts warrant a commitment for felony, the mittimus ought not to be for suspicion of felony, 1 *Lea. C. C.* 98. A warrant stating the commitment to be for treason, *R. v. Windham, Str.* 2, *Vaugh.* 142; or for treasonable practices, *R. v. Despard*, 7 *T. R.* 736; or on suspicion of high treason, without setting forth any particular accusation, or ground of the suspicion, is good, 2 *Hawk. c.* 16, s. 17. But it is not sufficient to state the commitment as for felony or misdemeanor generally. The peculiar species of either, ought to be set forth for the information of other justices, or of the king's bench, in discussing the propriety of admitting the question of bailment,

NOTE. and of the gaoler in making out a calendar of the prisoners for trial, 2 *Hale*, 122. A commitment "to answer to all such things as shall be objected against him" is illegal, 2 *Inst.* 591. The offence ought to be stated precisely, and not in the disjunctive, *R. v. Exced*, *Cald.* 26. Where the offence has been created by statute, it should be described in the mittimus as nearly as possible in the words of the statute, *R. v. Judd*, 2 *T. R.* 255; *R. v. Remnant*, 5 *T. R.* 169. It is sufficient to state the offence charged to be for "smuggling," *Com. Dig.* "Imprisonment," *H.* 7; "for felony, for the death of J. S.," or, "for burglary, in breaking the house of J. S.," 2 *Hale*, 122; or, "for being the author and publisher of a most infamous and seditious libel," without setting forth the libel, *R. v. Wilkes*, 2 *Wils.* 151; or, "for insulting justices of the peace in the execution of their office," without specifying what the party said or did, *Anon.* 2 *Barnard.* 155; but see 2 *Hawk.* c. 16, s. 16. It seems that a commitment, omitting the cause for which the party is to be imprisoned, does not make it absolutely void, so as to subject the gaoler or officer to an action for false imprisonment, or excuse him for an escape; for he may plead as an excuse, that the imprisonment was for felony, 1 *Hale*, 584.



## FORMS.

(1)  
Oath of a  
witness.

You shall true answers make to all such questions as shall be demanded of you, so help you God.

(2)  
Affirmation  
of a Quaker  
or Moravian  
witness.

I, A. B., being one of the people called Quakers, [or, of the united brethren called Moravians,] do solemnly, sincerely, and truly declare and affirm, that I shall true answer make to all such questions as shall be demanded of me on this inquiry.

(3)  
Affirmation  
of a Separatist  
witness.

I, A. B. do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect; and I do also, in the same solemn manner affirm and declare, that I shall true answer make to all such questions as shall be demanded of me on this inquiry.

(4)  
Examination  
of witnesses.

County of S. } The examination of the undermentioned  
to wit. } witnesses, C. D. and E. F., taken on oath,  
\_\_\_\_\_ } [and G. H. taken on solemn affirmation,]  
this day of &c., before me, J. P., one [or us, J. P. and  
R. S., two] of his majesty's justices of the peace for the

county aforesaid, in the presence and hearing of A. B., charged this day before me [or us], with &c.(a), FORMS.

The deponent C. D., of &c.(b), [grocer,] saith as follows:—  
[I saw, &c.(c).]

Taken before me [or us], the day and year above mentioned. And the said C. D. hath acknowledged himself bound to our lord the king, in the sum of £ , duly to prosecute the said A. B. for the said offence at the next assizes, [or general quarter sessions of the peace], to be held in and for [the division of] the said county. And the said E. F. and G. H. have acknowledged themselves respectively bound in the sum of £ , then and there to give evidence against the said A. B. touching the said offence.

J. P.  
[R. S.]

County of S. } The examination of A. B., of &c., taken  
to wit. } this day of &c., before me J. P., one (5) Examination  
of the ac-  
cused.  
\_\_\_\_\_ } [or us J. P. and R. S., two] of his majesty's  
justices of the peace in and for the county aforesaid. The  
said A. B. being charged before me [or us], on the oath of  
C. D., of &c., with having &c., and the witnesses against the  
said A. B. having been examined in his presence, the said  
A. B. is asked what he hath to say in his own behalf; where-  
upon the said A. B. saith as follows: [I went &c.] Taken  
before me [or us], the day and year aforesaid.

J. P.  
[R. S.]

County of S. } Whereas A. B. of &c. stands charged (6) Summons of  
a witness.  
to wit. } with &c., you are hereby required to be and  
\_\_\_\_\_ } appear before me, J. P., one of his majesty's  
justices of the peace for the said county, at &c., in the said  
county, on &c., at the hour of in the noon, to give  
evidence touching the premises. Given under my hand and  
seal this day of 183 .

J. P. (Seal.)

County of S. } To L. M., police constable; and to (7) Commitment  
for further  
examination.  
to wit. } N. O., keeper of the [common gaol], at  
\_\_\_\_\_ } in the said county. These are to

(a) Describe the offence here and in the other forms as in the warrant of commitment, *post*.

(b) Here state the name of the townland, parish, and barony; or, if in a town, the name of the town and street therein, in which the person resides.  
*See 57 Geo. 3, c. 56, ss. 2, 3, ante 482.*

(c) State the purport of the deposition as nearly as possible in the words of the witness.



**FORMS.** command you the said constable, in his majesty's name, forthwith to deliver into the custody of the said keeper, the body of A. B., charged this day before me, J. P., one of his majesty's justices of the peace, on the oath of C. D., with &c. And whereas the attendance of other material and necessary witnesses against the said A. B., is expected on the day of next; you, the said keeper, are hereby required to receive the said A. B. into your custody, until the day of inst., when you are hereby required to bring the said A. B. before me, at , in the said county, & before such other justice of the peace as shall be then and there present, to be further dealt with according to law. Give under my hand and seal the day of 183 .  
J. P.

(8)  
Form of a  
recognizance.

County of S. } Be it remembered that on the day of  
to wit. } in the year of the reign of &c., C.D.  
\_\_\_\_\_ } of &c. [yeoman,] personally came before me,  
J. P., one of his majesty's justices of the peace in and for said county of S., and acknowledged himself to owe to our said lord the king, the sum of £ sterling, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said A. B. shall fail in the condition underwritten.  
J. P.

(9)  
Condition to  
prosecute.

The condition of the above written recognizance is such, that whereas one A. B., late of &c., [labourer,] was this day brought before the above-named justice, and was by the above-named C. D. charged with [larceny of the goods of him the said C. D.] If, therefore, he the said A. B. shall and do at the next assizes to be held in and for the said county, [or, at the next general sessions of the peace, to be held in and for the division of the said county,] prefer, or cause to be preferred, one bill of indictment for the said offence against the said A. B., and shall then also give evidence there concerning the same, as well to the jurors that shall inquire thereof, as also to them that shall pass upon the trial of the said A. B., that then the said recognizance to be void, or else to stand in full force.

(10)  
Condition to  
give evidence.

The condition of the above written recognizance is such, that if the above bounden E. F. shall personally appear at &c. [describe the court as in the preceding form], and then and there give full and true evidence upon a bill of indictment, to be exhibited to the grand jury against A. B., late of &c. [labourer,] for &c.; and in case the said bill be found a true bill, then if the said E. F. shall then and there give evidence to the jurors that shall pass on the trial of the said A. B.,

upon the said bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, or else to remain in full force.

FORMS.

County of S. } Be it remembered that on &c., A. B.  
to wit. } of &c., T. U. of &c., and V. W. of &c.  
\_\_\_\_\_ } came before us, J. P. and R. S., two of his  
majesty's justices of the peace in and for the said county of S., and severally acknowledged themselves to owe to our said lord the king, that is to say, the said A. B. [£40], and the said T. U. and V. W. [£20] each, to be respectively levied of their lands and tenements, goods and chattels, if the said A. B.(a) shall make default in the performance of the condition underwritten.

(11)  
Recognizance  
of bail.J. P.  
R. S.

The condition of this recognizance is such, that if the above bound A. B. shall personally appear before his majesty's justices of the peace, at the next general sessions of the peace, to be held in and for the division of the said county, [or, before his majesty's justices of general gaol delivery at the next assizes, to be held in and for the said county,] then and there to answer to our said sovereign lord the king, for and concerning [the larceny of certain goods, the property of C. D. of &c.,] and to do and receive what shall, by the court, be then and there enjoined him, and shall not depart the court without license, then the above written recognizance shall be void.

(12)  
Condition of  
the above.

County of S. } To L. M. police constable, in and for the  
to wit. } said county, and to the keeper of the com-  
\_\_\_\_\_ } mon gaol, [or district bridewell,] at N. in  
the said county. These are to command you the said constable, in his majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, [or district bridewell,] the body of A. B.(b), charged this day before me, J. P., one of his majesty's justices of the peace, in and for the said county, for that he, on &c., [committed a violent assault on one C. D.(c)] And you the said keeper, are

(13)  
Commitment  
for safe  
custody.

(a) If the principal should be an infant or married woman, omit all mention of her until this place; and say, "if A. B., wife of B. B., of &c. ;" [or, if A. B. of &c., an infant, under the age of twenty-one years,] and afterwards, in the condition, say, "the said A. B."

(b) It should contain the name and surname of the party if known. If not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair and the like; and to add, that he refuses to tell his name, 1 Hale, 577.

(c) As to the mode of stating the charge, see ante 499.

**FORMS.** hereby required to receive the said A. B. into your custody, in the said common gaol, [or district bridewell,] and him there safely keep(*a*), until he shall be discharged by due course of law(*b*). Given under my hand and seal(*c*), at \_\_\_\_\_ in the said county, this \_\_\_\_\_ day of \_\_\_\_\_ 183 (d).

J. P. (Seal)

14  
Warrant of  
deliverance.

County of S. } J. P. and R. S. esquires, two of his  
to wit. } majesty's justices of the peace for the said  
\_\_\_\_\_ } county, to the keeper of [his majesty's gaol]  
at \_\_\_\_\_ in the said county. Forasmuch as A. B. late of  
&c., [labourer], hath before us found sufficient sureties for his  
appearance at the next assizes [or general sessions of the peace  
to be held in the \_\_\_\_\_ division] of the said county, to answer  
concerning the [felonious taking, &c., *describe the offence  
shortly, as in the warrant or recognizance*], with which he  
stands charged, we command you that if the said A. B.  
remain in your gaol for no other than the said cause, that you  
deliver him thence, and suffer him to go at large. Given  
under our hands and seals, at \_\_\_\_\_, in the said county, the  
day of \_\_\_\_\_ 183 .

J. P.  
R. S.(e)

(*a*) These words are inserted by way of admonition to the officer, to put him in mind of his duty, and the punishment which he must undergo in case of an escape, *R. v. Wyndham, Str. 2*.

(*b*) The committal must have an apt conclusion. Thus, if it be for a crime punishable by indictment, it is proper to say, "till he be thence delivered by law," or, "by order of law," or, "by due course of law," or words to that effect, *2 Inst. 52; 2 Hale, 123; Carth. 291; Meash's Case Ill. R. 805*.

(*c*) Every warrant of commitment must be in writing, and under the hand and seal of the justice, *2 Inst. 52*. Without this, the commitment is unlawful, the gaoler is liable to a false imprisonment, and the wilful escape by the gaoler, or breach of prison by the prisoner makes no felony. But this was not intended of a commitment in a court of record, as the King's Bench gaol delivery, or sessions of the peace; for there, the record itself, or the memorial thereof, which may at any time be entered of record, are a sufficient warrant, without any warrant under seal, *1 Hale, 583*.

(*d*) The time and place of making should also be stated, *2 Hawk. c. 1 s. 13*. A mistake in the date might be fatal, *Ex parte McGee, Mod. & C. 206*.

(*e*) In the cases of misdemeanor, this may be issued by one justice, and the form may then be altered accordingly.

## CHAPTER III.

### OF THE HABEAS CORPUS.

44 *Geo. 3, c. 102(a), s. 1.* That from and after the passing of this act, it shall be lawful for any judge of his majesty's courts of King's Bench or Common Pleas of England and Ireland respectively, or any baron of his majesty's court of Exchequer of the degree of the coif in England, or any baron of his majesty's court of Exchequer in Ireland, or any justice of oyer and terminer or gaol delivery, being such judge or baron as aforesaid, at his discretion, to award a writ or writs of habeas corpus, for bringing any prisoner or prisoners, detained in any gaol or prison, before any of the said courts, or any sitting of nisi prius, or before any other court of record in the said parts of the said united kingdom, to be there examined as a witness or witnesses, and to testify the truth before such courts, or any grand, petit, or other jury, in any cause or causes, matter or matters, civil or criminal, whatsoever, which now are, or hereafter shall be depending or to be inquired into or determined in any of the said courts.

Any judge may award writs of habeas corpus *ad testificandum*, to bring prisoners before a court of record.

21, 22 *Geo. 3, c. 11(b), s. 1.* Whereas, as the law now stands, great delays may be used by sheriffs, gaolers, and other officers to whose custody any of the king's subjects may be committed for criminal or supposed criminal matters, in making return of writs of habeas corpus, to them directed, by standing out an alias and pluries habeas corpus and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the king's subjects may be long detained in prison in such cases where by law they are bailable, to their great charges and vexation; for the prevention whereof, and the more speedy relief of all persons in prison, for any such criminal or supposed criminal matters, be it &c., that whenever any person or persons shall bring any habeas corpus, directed to any sheriff or sheriffs, gaoler, minister, or

A sheriff or gaoler, being served with a habeas corpus for any

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(a) Entitled "*An Act for the more effectual administration of justice in those parts of the United Kingdom of Great Britain and Ireland, called England and Ireland, by the issuing of writs of habeas corpus ad testificandum in certain cases.*"

(b) Entitled "*An Act for the better securing the liberty of the subject,*" and commonly called the HABEAS CORPUS act.

21 & 22 G. 3.  
c. 11.

his or their appearance in the court of King's Bench, the term following, or at the next assizes, sessions, or general gaol delivery of and for such county, city, or place, where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances, into the said court where such appearance is to be made, unless it shall appear unto the said lord chancellor, or lord keeper, justice or justices, baron or barons, that the party so committed is detained upon a legal process, order, or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences, for which, by law, the prisoner is not bailable.

After two terms, prisoner not to have *hab. corp.* in vacation.

3. Provided always, and be it &c., that if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, such person so wilfully neglecting shall not have any habeas corpus to be granted in vacation time in pursuance of this act.

4. [*Officers(a) refusing to make the returns aforesaid, or to bring up the bodies of prisoners in due time, or to deliver within six months [qu. hours?] after demand, a true copy of the warrant of commitment and detainer, shall, for the first offence forfeit £100, and for the second £200, and be incapacitated.*]

5. [*If any person shall again imprison for the same offence a party enlarged by habeas corpus, save by lawful process of the court, he shall forfeit £500.*]

Prisoner committed for treason or felony, having prayed on first week in term, or first day of assizes, to be brought to trial, the court may,

6. Provided always, and be it further &c., that if any person or persons shall be committed for high treason or felony plainly and specially expressed in the warrant of commitment, and upon his prayer or petition in open court(b), the first week of the term, or first day of the sessions of oyer and terminer or general gaol delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general gaol delivery after such commitment, it shall and may be lawful to and for the judges of the

(a) A constable is an officer within the meaning of this section, and obliged to give a copy of the warrant of commitment, *Iludson v. Ash*, *Str.* 167.

(b) The prayer may be made either by the prisoner in person, or by his counsel or attorney. None are entitled to make their prayer under this act, but such as are committed by a warrant of a justice of peace or secretary of state, and not those committed by rule of court, for that is not within the meaning of the act which speaks of a commitment by warrant. *Bac. Abr. Hab. Corp. B. 4.*

wards the same(a). And if any person or persons(b) shall be or stand committed or detained as aforesaid for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation time and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process), or any one in his or their behalf, to appeal or complain to the lord chancellor, or lord keeper, or any one of his majesty's justices either of the one bench or the other, or the barons of the Exchequer; and the said lord chancellor, lord keeper, justices, or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any one on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus, under the seal of such court, whereof he shall then be one of the judges, to be directed to the officer or officers, in whose custody the party so committed or detained shall be, returnable immediately before the said lord chancellor, or lord keeper, or such justice, baron, or any other justice or baron of any of the said courts, and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor, or lord keeper, or such justices, barons, or one of them, before whom the said writ is made returnable; and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer; and thereupon, within two days after the party shall be brought before them, the said lord chancellor, or lord keeper, or such justice or baron, before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for

21 & 22 G. 3,  
c 11.

son,) may apply to a judge, who shall grant a habeas corpus, and the prisoner being brought up, shall be discharged on giving security.

(a) Unless the writ be so signed, a party cannot be punished for disobeying it, *Rea v. Roddam*, *Cowp.* 672.  
(b) The writ of habeas corpus is said to be the privilege of the British subject only, 1 *Ch. Bl. Com.* 132, n. At all events, it will not be granted to bring up an alien enemy, who is a prisoner of war, *Anon.* 2 *Bl.* 1324; nor an alien neut:al, who has been forced to serve on board an enemy's ship, and been taken in that situation, *Rea v. Schieffer*, 2 *Burr.* 765.

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and forfeitures in this act before mentioned(a), both for the first and second offence respectively, to be recovered in manner aforesaid, by the party grieved.

9. [*Prisoners may move for habeas corpus in the courts of Chancery and Exchequer, as well as in the King's Bench and Common Pleas. And any of the judges of those courts, improperly refusing the writ in vacation, shall forfeit to the party grieved £500(b).*]

No *hab. corp.* to be granted for any county after proclamation of the assizes;

11. And to the intent, no person may avoid his trial at the assizes or general gaol delivery, by procuring his removal before the assizes, at such times as he cannot be brought back to receive his trial there; be it &c., that after the assizes proclaimed by that county where the prisoner is detained, no person shall be removed from the common gaol upon any habeas corpus granted in pursuance of this act, but upon any such habeas corpus shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.

but may, after assizes ended.

12. Provided nevertheless, that after the assizes are ended, any person or persons detained may have his or her habeas corpus, according to the direction and intention of this act.

Persons committed for felony, or being accessory thereto, not bailable under this act.

15. And because many times, persons charged with *petty treason*, felony, or murder, or as accessories thereunto, are committed upon suspicion only, whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of the peace who committed the persons, and have the examination before them, or to other justices of the peace of the county; therefore, be it &c., that where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact to any *petty treason*, felony, or murder, or upon suspicion thereof, or with suspicion of *petty treason*, felony, or murder, which *petty treason*, felony, or murder, shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

16. [*The chief governor and privy council may, by proclamation under the great seal, suspend this act during an actual invasion or rebellion here or in Great Britain. And during the suspension no person charged with being concerned therein,*

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(a) Viz. for the first offence £100; for the second, £200, and incapacity of holding his office.

(b) This section is confined to the case of a single judge acting in vacation; and does not apply to the King's Bench, which exercises its discretion as to the propriety of allowing the writ, in each particular case, 2 *Hawk. c. 15, s. 24.*

Court of King's Bench, and justices of oyer and terminer or general gaol delivery, and they are hereby required, upon petition to them made in open court the last day of term, sessions, or gaol delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail(a), unless it appears to the judges or justices upon oath made(b), that the witnesses(c) for the king could not be produced the same term, sessions, or general gaol delivery; and if any person or persons committed as aforesaid, upon his prayer or petition in open court, the first week of the term, or the first day of the sessions of oyer and terminer and general gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer or general gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

21 & 22 G. 3,  
c. 11.

at the end of term or assizes, enlarge him upon bail, unless affidavit that crown witnesses could not be produced, and if not tried during the second term or assizes, he shall be discharged.

7. Provided always, that nothing in this act shall extend to discharge out of prison any person charged in debt or other action, or with process in any civil cause; but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody, according to the law, for each other suit.

Nothing herein to discharge persons arrested on civil process.

8. Provided always, and be it &c., that if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers, unless it be by habeas corpus or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common gaol; or where any person is sent by order of any judge of assize, or justice of the peace, to any common workhouse or house of correction; or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; or in case of sudden fire, or infection, or other necessity; and if any person or persons shall, after such commitment aforesaid, make out and sign or countersign any warrant or warrants for such removal aforesaid, contrary to this act, as well he that makes, or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains

Persons committed on any criminal charge, shall not be removed, save by *hab. corp.* or other legal writ.

(a) But justices of gaol delivery have no power to bail a prisoner in custody here for treason committed abroad, *Rex v. Platt*, 1 *Lea. C. C.* 157.

(b) It is not necessary, although it is the ordinary practice, that an affidavit should be made. An oath *viva voce* has been received, *Rex v. Lord Delamere*, *Comb.* 6.

(c) The illness of one witness is sufficient to sustain this excuse, *Comb.* 6.



## Of the Habeas Corpus.

3, c. 100. court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said justice or baron shall and may proceed thereupon, and award process to return the said writ, in case of disobedience thereto, in like manner as in case of disobedience to any writ originally awarded by the said court. Provided also, that if such writ shall be awarded by the court of King's Bench, or the court of Common Pleas, or the Exchequer in the said countries respectively (a), the said court shall have like power to award writ as the respective courts of King's Bench and Common Pleas in each of the said countries now have in term, but that, in the judgment of the court, obedience thereunto shall be conveniently paid during such term, the same may, at the discretion of the said court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the court, or, if in Ireland, before any justice or baron of the same court, who shall and may proceed thereupon in such manner as by this act is directed concerning writs issuing in, and made returnable at such vacation.

### NOTE.

different  
kinds of ha-  
beas corpus.

H. C. *ad  
deliberandum  
et recipiendum*.

An habeas corpus is a writ for bringing the body of a person who is imprisoned, before the court, with the cause of detention, *Com. Dig. Hab. Corp. A.* There are several species of this writ: as the *habeas corpus ad respondendum et recipiendum*; *ad deliberandum et recipiendum*, or *cum causa*; *ad testificandum*; *ad subjiciendum*. The first two are confined altogether to civil matters, *Bac. Abr. Hab. Corp. A. & C.*, and therefore, be further noticed here. The writ *ad deliberandum et recipiendum* lies to remove a prisoner to take his trial in the county where the offence was committed. *Bac. Abr. Hab. Corp. A.* Thus, a person in England who has committed a criminal offence in Barbadoes, has been sent there by writ of habeas corpus to take his trial, *Warner's Case*, 3 *Keb.* 1568. The court of King's Bench will grant a writ of habeas corpus to take the body of a confined debtor before a magistrate to be examined from time to time respecting a charge of felony or misdemeanor, *Ex parte Griffiths*, 5 *B. & Ald.* 100. A writ of habeas corpus will be granted by the court of Exchequer to remove a prisoner who is in custody under an attachment from that court, in order that he may take his trial on an indictment in another county, *Re Wetton*, 1 *Cr. & J.* 100. Justices of gaol delivery may send prisoners, by writ of habeas corpus, to the sheriff of another county, and a precept to the

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(a) Viz. England and Ireland.

of that other county to receive them, namely, for a felony committed in that county, though that county be out of the circuit of the justice that sends them, 2 *Hale*, 37. If any habeas corpus come to a gaoler to remove his prisoner, he shall certify also the cause for which he stood there committed; and the gaoler, to whose custody he may be transmitted, shall apprise the court of the offence for which he was confined in the first gaol, that he may be remanded there, if there be cause, *Kel.* 4.

NOTE.

The writ of *habeas corpus ad faciendum et recipiendum*, or *Of H. C. cum causa*, will be issued in favour of bail to the action, of a person in custody on a criminal charge, in order that he may be rendered in their discharge, *Peter Verger's Bail*, 2 *Str.* 1217. But it is too late to apply for the writ, when the prisoner is actually on board for transportation, *Fowler v. Dunn*, 4 *Burr.* 2034. The prisoner having been brought up, and the *exoneretur* entered on the bail piece, it is usual to remand him to his former custody, after a momentary commitment to the marshal, *Bond v. Isaac*, 1 *Burr.* 339.

*Habeas corpus ad testificandum* lies to remove a prisoner to give evidence, *Com. Dig. Hab. Corp.* \* I. But this writ *Of H. C. ad testificandum* will not be granted, when the application for it appears to be a mere contrivance, as where A, being convicted of bribery on the evidence of B, afterwards indicted him for perjury in that very case; the court refused to allow A to be removed to give evidence on the trial, while a prisoner in execution, *R. v. Burbage*, 3 *Burr.* 1440. Neither will the writ be granted to bring up a prisoner of war, *Furly v. Newnham*, *Dougl.* 419, nor to bring up a sailor serving on board a man of war, who is not detained there as a prisoner, unless there be an affidavit that he had been served with process, and was willing to attend, *R. v. Roddam*, *Cowp.* 672, nor to bring up a party confined in a county gaol, to give his vote for a member of parliament, *Ex parte Jones*, 2 *Nev. & Man.* 36. But it will be granted to bring up a person in custody, to give evidence before an election committee of the house of commons, *In re Price*, 4 *East*, 587. Even, as it should seem, though the charge upon which the prisoner is confined be a felony, *In re Pilgrim*, 3 *Adol. & Ell.* 485. But in such a case the court directed notice to be served on the attorney general, the committing magistrate, the constable who arrested him, and all persons (if any) having civil detainers. So also, the writ has been granted by the Exchequer, to enable the party on being brought up, to defend himself in person against a revenue prosecution, *Att. Gen. v. Cleave*, 2 *Dowl. Pr. C.* 668.

The *habeas corpus ad subjiciendum*, is a high prerogative *Of H. C. ad subjiciendum* writ, which the king may issue to any place, in order that he may be informed (as he has a right) of the state and condition

NOTE.

of every prisoner, and of the reasons for which he is confined. It is also, in regard to the subject, deemed his writ of that is, such a one as he is entitled to, *ex debito iustitiæ* is in nature of a writ of error to examine the legality of his commitment, *Bac. Abr. Habeas Corpus, A.* Many abuses and perversions of justice having occurred, to the great oppression of the subject, the above act of the 21 & 22 (c. 11), was passed. It is known as the HABEAS CORPUS ACT, and has been appropriately called, the second magna charta of our liberties, 4 *Bl. Com.* 438. As the law now stands, whenever a person is restrained of his liberty by being confined in a common gaol, or by a private person, he may, for a writ of habeas corpus, to have his body and removed to some superior jurisdiction, which has authority to examine the legality of such commitment, *Bac. Abr. Corpus, A.*

now and by  
to be granted.

Applications for this writ are usually made in term time to the court of King's Bench, and in vacation, to the Lord Chancellor, or some of the twelve judges. These applications in vacation must, according to the statute, be made in writing, signed by the party and attested by two witnesses. They must be accompanied by a copy of the warrant of commitment, and an affidavit that such copy has been demanded of the detainer and refused; and, unless founded on an apparent defect in the commitment, are supported by an affidavit of those facts and circumstances upon which the prisoner relies, *Id. ibid. Ch. C. L.* 124. An affidavit made by the prisoner alone has not been deemed insufficient to ground a motion; it must be supported by other evidence, 1 *Ch. C.* 124. If a copy of the warrant have been refused, the court will issue an habeas corpus, almost as of course, being warranted in that case to presume every thing against the legality of the commitment, *Hobhouse's Case*, 3 *B. & Ald.* 423. If the application be made to a judge in vacation, it is his duty by inspection of the documents laid before him, that it is not illegal, to have brought himself fully within the act, and if it appears from them, either that the detainer was for treason or felony plainly expressed in the warrant, or that it was in execution, or under legal process, he would be just in refusing the writ; but in all other cases it would seem that he has no discretion, but must grant it, *Id. ibid.*

or what  
is granted or  
refused.

It will not be granted to bring up a person committed by either house of parliament, for such commitments are always in execution, *R. v. Flower*, 8 *T. R.* 314; *Edgett v. Abbot*, 14 *East*, 1; *Earl of Shaftesbury's Case*, 1 *Mod.* 144; *R. v. Paty*, 2 *Ld. Raym.* 1105. It will not be issued to bring up a party under sentence of imprisonment for a misdemeanor, in order that he may show himself in person against a criminal information, *Ex parte*

**B. & Ald.** 679, *n.*, nor, if the court see that by granting it no relief can be had, but that the party must ultimately be demanded, *R. v. Hobhouse*, 3 *B. & Ald* 420, 2 *Ch. R.* 207. The writ will be granted to a husband against a party who has seduced his wife, and lives in adultery with her, *R. v. Winton*, 5 *T. R.* 89; and to a nephew and adopted son to bring up the body of a very old and infirm person unlawfully detained by a third party, *Lessee Blackwood v. Gregg, Hayes*, 282. So, it will be granted to remove a child from the custody of its mother, although there is no suggestion that the child is subjected to any improper confinement or restraint, nothing being shewn to prove that the custody of the father is improper, *Ex parte M'Clellan*, 1 *Dowl. Pr. Ca.* 81. It will be granted against a doctor of physic who confines a person under pretence of curing him of madness, *Bac. Abr. Hab. Corp. B. 6*. But where an apprentice of the age of eighteen, voluntarily entered into the sea service, a habeas corpus was refused to his master to bring him up, *R. v. Reynolds*, 6 *T. R.* 497; *Ex parte Lansdown*, 5 *East*, 38. But the apprentice himself, if impressed, may have the writ, *R. v. Edwards*, 7 *T. R.* 745. The writ will not be granted to bring up an apprentice to be discharged, his personal liberty not being restrained, *Anon.* 1 *Ch. R.* 654, *n.* A man impressed under a press act, who is not in custody, cannot bring habeas corpus; but the court may grant a rule to shew cause why he should not be discharged. *R. v. Kessel*, 1 *Burr.* 637. The writ will not be granted to a prisoner of war, the subject of a neutral power, taken in the enemy's service, into which he was forced when taken prisoner in an English ship, *R. v. Schiever*, 2 *Burr.* 765. A was charged with felony before three magistrates, who, upon hearing the evidence offered, bailed him; but afterwards, upon hearing additional evidence, committed him; A was held not to be entitled to a habeas corpus for his discharge, *Ex parte Allen*, 3 *Nev. & M.* 35. If the writ be granted on the ground of an illegal commitment by the magistrate, it will not be made a part of the rule, that no action shall be brought against the magistrate, *Ex parte Hill*, 3 *C. & P.* 225.

NOTE.

An habeas corpus must be directed to the person in whose custody the party is, whether he be an officer of justice or a private person, *Godb.* 44; and it must not be directed in the disjunctive; as to the sheriff or gaoler, *R. v. Fowler*, 1 *Salk.* 350. How directed.

The person to whom it is directed having been served with the writ, it is his duty to give instant obedience to it, by making the proper return on the back of it, *Bac. Abr. Hab. Corp. B.* without waiting for an *alias* or *pluries* writ, *R. v. Winton*, 5 *T. R.* 89; and by bringing up his prisoner according to its exigency. But this latter duty is dispensed with, if the prisoner be confined on a charge of felony or treason Of the return.

## Of the Habeas Corpus.

NOTE

plainly expressed in the warrant, or be in custody in violation on any civil cause of action, 1 *Ch. C. L.* 127. There be no warrant of commitment, shewing the crime, the return must return the truth of the whole matter, *Bac. Ab. Corp. B.* 9; and the prisoner must be brought up, as in case he has a *prima facie* right to be bailed, unless the return, which the court frequently orders the magistrates to return, *R. v. Rowe, Batty*, 138; *R. v. Stewart, B. & Ald.* 295; close a non-bailable felony, *Burn, J. Habeas Corpus*, 1. *R. v. Mountnorris, Ir. T. R.* 464. The return should state when, by whom, and for what cause the prisoner has been committed, *Bushell's Case, Vaugh.* 137. If that has been done by the warrant of a justice, it is the safest copy the warrant in the return, *Com. Dig. Hab. Corp. E.* 2. But the same precision is not required if it has been done by the order of a court of record, *Clarke's Case*, 3 *Salk.* 92. In making out the return, it ought to be done fully and according to the facts, *Bushell's Case, Vaugh.* 137; *Nash's Case, B. & Ald.* 295; and with the same certainty as in indictments, viz. certainty to a certain extent in general, *R. v. Lloyd, Regis, Dougl.* 158; *Deybel's Case*, 4 *B. & Ald.* 243. It is enough if the return shew a good cause of commitment, though it be not in technical form, *Bethell's Case*, 1 *Salk.* 348; and see *Souden's Case*, 4 *B. & Ald.* 294. And it seems a sufficient return that the prisoner is in custody under the sentence of a court of competent jurisdiction to inquire his offence, without setting forth the particular circumstances necessary to warrant the sentence, *R. v. Suddis*, 1 *East*, 302. A return that, "at the coming of the writ, defendant was in the keeper of the prison's custody;" or that, "before the coming of the writ defendant was discharged out of his custody, by an order of sessions," or, "by due course of law, *Com. Dig. Hab. Corp. E.* 2; or that the prisoner is detained in custody, being charged upon oath with being a deserter from the R. L. regiment," *R. v. Mountnorris, Ir. T. R.* 460; or that he has not the person in his possession, custody, or power, *R. v. Winton*, 5 *T. R.* 91, have been held sufficient. And this last form of return is said to be most usual. But it is not sufficient to say, that at the time of receiving the writ he had not the body of the person detained in custody. *Id. ibid.*

If the officer refuse to make a return, or make an insufficient return, he is guilty of a contempt, and a warrant or an attachment will be issued against him at once, without having recourse to an *alias* and *pluries habeas*, *R. v. Winton*, 5 *T. R.* 89. See 56 *Geo. 3, c. 100, s. 2, ante* 511. But an attachment will not be granted to accompany the *habeas corpus*, *R. & Earl Ferrers*, 1 *Burr.* 631. Or he may be indicted for the injury to public justice, or an action on the case will lie against him for a false and improper return, *R. v. Clark*, 1

*Salk.* 349; but the truth of the return can never, in criminal cases, be controverted upon the discussion, neither can the defendant suggest any matter repugnant to it; but he may suggest matter which will avoid its effect, 2 *Hawk.* c. 113; *Bac. Abr. Hab. Corp. B.* 11. Before the return is filed, it may be amended in matters of form, or by introducing an averment of a matter of fact, *Bac. Abr. Hab. Corp. B.* 12. But no amendment can be made after it is filed, *R. v. Mount-norris, Ir. T. R.* 460.

NOTE.

A habeas corpus being issued by a judge in vacation, returnable *immédiaté* before himself at chambers, may be returned into the court of King's Bench, if the term have commenced, *R. v. Shebbeare, 1 Burr.* 460; or if, upon a writ so returnable, the party be brought before the single judge, he may adjourn the return, and direct him to be brought into court in term time, *R. v. Clarke, 1 Burr.* 606.

To whom it is to be returned.

The party being brought up, the next consideration is, whether he shall be bailed, remanded, or absolutely discharged. The depositions upon which the commitment is founded, are generally ordered to be returned, that the court, by examining them, may be aware of the amount of the offence, although it may not be fully or correctly stated in the warrant of commitment, *R. v. Stewart, Batty* 139. For if the court, notwithstanding the informality of that instrument, be able to discover that there is a corpus delicti which constitutes a felony, they will not bail the prisoner as of right, but may perhaps remand him, *R. v. Marks, 3 East* 157. Where persons were confined without warrant, on a charge of smuggling and suspicion of murder, and it appeared to the court on the return of the habeas corpus, that they might be guilty of the crimes charged, they were committed to the marshal, in order that they might be taken before a magistrate for examination, and to be further dealt with according to law, *Ex parte Krans, 1 B. & C.* 258. If it be uncertain, both from the depositions and commitment, whether a treason or felony has been committed by the prisoner, but that, at all events, he has been guilty of a great misdemeanor, the court will require ample sureties, *Burn, J. Hab. Corp. II.* The King's Bench may remand the prisoner to the same gaol, and order him to be brought up from time to time until they have determined to discharge or order him to be detained in prison, *Anon. 1 Ventr.* 330; or he may be bailed to appear *de die in diem*, until the matter of the return be determined, *R. v. Davison, 1 Id. Raym.* 603. If the court ascertain that there has been no pretence or imputing crime to the prisoner, he will be discharged, *Bushell's Case, Vaugh.* 156. So also, if he has been a long time in custody, *e. g.* two years, and no attempt made, or undertaking given by the attorney general to bring on the trial, *R. v. Fitzgerald, 1 Wils.* 254; *R. v. Bell, Andr.* 64. But if the return shew a sufficient cause, though it be

Of proceedings on the return.

## NOTE.

false, or if, independent of the return, the court can ascertain a sufficient cause, he will be either bailed or remanded, according to the strength and seriousness of the charge, *Con. Dig. Hab. Corp. F.* If the prisoner have been committed by the coroner for manslaughter, the court will read the evidence given on the inquest, and upon the return of the writ, will use its discretion as to bailing the prisoner. But this would not be done after the finding of an indictment by a grand jury, because the evidence given before that tribunal is secret, *R. v. Dalton*, 2 *Str.* 911.

If the court decide that the prisoner shall be remanded, it may either be to the marshalsea, *R. v. Shebbear*, 1 *Burr.* 460, or to the prison from whence he came, *Sir R. Peyton's Case*, *Ventr.* 346; but not to the custody of a king's messenger, although brought up by him, *R. v. Shebbear*. If he is bailed, after a removal by habeas corpus, the number of sureties always required is four, *R. v. Dalton*, 2 *Str.* 911, who enter into recognizances, together with their principal, in the usual way, that he shall appear and take his trial. Where the defendant is in depressed circumstances, the court will permit him to have the recognizances entered into before a magistrate of the county, named in the rule, *R. v. Massey*, 6 *M. & S.* 108. If he is to be discharged, the court, in most cases, leaves him at liberty to go where he pleases, seeing that he is under no illegal restraint; but, in the case of a young lady, the court ordered the tipstaff to wait upon her home to her guardians, *R. v. Clarkson*, 1 *Str.* 444. A boy of thirteen, being brought up by habeas corpus, sued out by his father, to have him delivered from his aunt, the court left him to go where he pleased, and would not summarily determine the right of guardianship, *R. v. Smith*, 2 *Str.* 982, *Ridgw. C. T. Hardw.* 149; and see *R. v. Delaval*, 3 *Burr.* 1434. If a sane person, confined by her husband in a madhouse, is brought up, and intends to demand the peace, but has not articles prepared, the court will permit her to go with a friend, he undertaking to produce her, *R. v. Turlington*, 2 *Burr.* 1114.

## CHAPTER IV.

### OF THE LIMITATION OF PROSECUTIONS.

2 *Geo. 1, c. 20(a), s. 1.* Whereas, no time is limited by the law for prosecutions for words, whereby great inconveniences may happen, and the person accused may be disabled to make such defence as he might have made, if he had been prosecuted and tryed for the same in a short time after the crime committed: for remedy whereof, be it enacted &c., that no person or persons shall be prosecuted for any words that shall be spoken, after the twenty-fourth day of June, (1716), by indictment or information in any courts of law or justice, unless information of speaking such words be given upon oath before one or more justice or justices of the peace, of the county, city, or town, where such words shall be spoken, within one calendar month, or before one of the judges of his majesty's court of chief place, within two calendar months after the words are spoken.

No prosecution for words, unless information be given as herein.

2. That upon such information, if the case shall require it, the lord chief justice, or other judge of the King's Bench, or such justice or justices of the peace, shall issue his or their warrant or warrants for apprehending and bringing the persons so accused before him or them, or some other of his majesty's justices of the peace of the county, city, or town, where such words shall be so spoken; and the lord chief justice or judges of the King's Bench, or such justice or justices of the peace, before whom such offender shall be brought, shall oblige him, her, or them, to appear the next term, assizes, or sessions, which shall be held for the county, city, or town, where such words shall be spoken, in order to his, her, or their tryal.

Whereupon a warrant shall issue, and defendant shall be bound to appear next assizes or sessions.

3. That all actions, suits, bills, indictments, or informations, which, after the first day of July, (1716), shall be had, brought, sued, or exhibited, for any forfeiture upon any statute penal, made or to be made, whereby the forfeiture is or shall be limited to the king, his heirs or successors only, shall be had, brought, sued, or exhibited within two years next after the offence committed, or to be committed against such act penal, and not after two years; and that all actions, suits,

Prosecutions on penal statutes, where the forfeiture is to the king only, shall be in two years after offence.

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(a) Entitled "*An Act to limit the time for criminal prosecutions for words spoken.*"



2 G. 1, c. 20.

But if the forfeiture be to the king and prosecutor, it may be brought by the latter in one year after offence, or by the king in two years after that one year.

But prosecutions to be in shorter time if limited by any penal statute.

bills, or informations, which, after the said first day of July, shall be had, brought, sued, or commenced, for any forfeiture upon any penal statute made or to be made, the benefit and suit whereof is or shall be by the said statute limited to the king, his heirs or successors, and to any other which shall prosecute in that behalf, shall be had, brought, sued, or commenced by any person that may lawfully pursue for the same as aforesaid, within one year next after the offence committed or to be committed against the said statute; and in default of such pursuit, that then the same shall be had, sued, exhibited, or brought for the king's majesty, his heirs or successors, at any time within two years after that year ended: and if any action, suit, bill, indictment, or information, for any offence against any penal statute made or to be made, shall be brought after the time in that behalf before limited, that then the same shall be void and of no effect; any act or statute made to the contrary notwithstanding.

4. Provided always, that where any action, information, indictment, or other suit, is or shall be limited by any statute penal to be had, sued, commenced, or brought, within shorter time than is afore rehearsed, that in every such case, the action, information, indictment, or other suit, shall be brought within the time limited by such statute.

## NOTE.

There is no general statute of limitation in criminal cases. Offenders therefore, may be prosecuted at any time during their lives, unless some period has been fixed by a statute applying to the particular crime, 1 *Ch. C. L.* 160. The court of King's Bench however, has laid down certain rules of practice for its guidance in granting rules for criminal informations. No criminal information can be moved for in the last four days of term, *R. M. T.* 17 *Geo.* 3, 1 *H. & Bro.* 36, *n.* unless the matter complained of has occurred in that term, *R. v. Clendenning*, 1 *H. & Bro.* 36. Criminal informations against magistrates, *R. v. Harries*, 13 *East.* 270; *R. v. Bishop*, 5 *B. & Ald.* 612, and public officers, *R. v. Hartley*, 4 *B. & Adol.* 869, *n.* must be moved for, at furthest, in the second term after the offence is alleged to have been committed, there being no intervening assizes. In the case of private persons, the only variation which this rule has received, is, that where the offence complained of is a libel, the period of its coming to the applicant's knowledge is that from which the time is to be counted, *R. v. Jullie*, 4 *B. & Adol.* 867.

## CHAPTER V.

### OF THE VENUE OF CRIMINAL PROSECUTIONS.

6 Geo. 4, c. 51(a), s. 2. That from and after the passing of this act, in every action, whether the same be transitory or local, which shall be prosecuted or depending in any of his majesty's courts of record in Dublin, and in every indictment removed into his majesty's court of King's Bench in Dublin by writ of certiorari, and in every information filed by his majesty's attorney or solicitor general in Ireland, or by leave of the court of King's Bench in Ireland, and in all cases where any person or persons shall plead to, or traverse any of the facts contained in the return to any writ of mandamus in Ireland, if the venue in such action, indictment, or information, be laid in any county of a city, county of a town, or town corporate within Ireland, or if such writ of mandamus be directed to any person or persons, or body politic or corporate in Ireland; it shall and may be lawful for the court in which such action, indictment, information, or other proceeding shall be depending, at the prayer and instance of any prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, indictment, information, or proceeding, to be tried by a jury of the county next adjoining to such county of a city, county of a town, or town corporate, and to award proper writs of venire or distringas accordingly, if the said court shall think fit and proper so to do.

In all informations and indictments removed into K. B., the court may change the venue, if it be in a county of a city &c. to the county at large.

3. That it shall and may be lawful for any prosecutor or prosecutors to prefer his, her, or their bill or bills of indictment, for any offence or offences committed, or charged to be committed within any county of a city, county of a town, or town corporate in Ireland, to the jury of the county next adjoining to such county of a city, county of a town, or town corporate, sworn and charged to inquire for the king, for the body of such adjoining county, at any sessions of oyer and terminer, or general gaol delivery; and that every such bill of indictment, found to be a true bill by such jury, shall be valid and effectual in law, as if the same had been found to be a true bill by any jury sworn and charged to inquire for the

Offences committed within counties of cities &c., may be inquired of at the assizes for the county at large.

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(a) Entitled "*An Act for the amendment of the laws with respect to special juries, and to trials in counties of cities and towns, and towns corporate in Ireland.*"

6 G. 4, c. 51. king, for such county of a city, county of a town, or town corporate.

Indictments &c. found by city juries may be ordered to be filed with the officer of adjoining county; and the defendant removed to the gaol thereof.

4. That if it shall appear to any court of oyer and terminer, or court of general gaol delivery for any county of a city, county of a town, or town corporate in Ireland, that any indictment found by any grand jury of such county of a city, county of a town, or town corporate, or any inquisition taken before the coroner or coroners of such county of a city, county of a town, or town corporate, or other franchise, is fit and proper to be tried by a jury of any next adjoining county, it shall and may be lawful for the said court of oyer and terminer or general gaol delivery, at the prayer of any prosecutor or defendant, to order such indictment or inquisition, and the several recognizances, examinations, and depositions relative to such indictments and inquisitions, to be filed with the proper officer, to be by him kept among the records of the court of oyer and terminer and general gaol delivery for such next adjoining county, and to cause the defendant or defendants in such indictments to be removed by writ of habeas corpus to the gaol of such next adjoining county; which writ the said court is hereby directed and authorized to issue, if such defendant or defendants be in the prison of such county of a city, county of a town, or town corporate; and if such defendant or defendants be not in such prison, to commit such defendant or defendants to the gaol of such next adjoining county, and to cause the prosecutors and witnesses against such defendant or defendants to enter into a recognizance or recognizances to prosecute and give evidence against such defendant or defendants, at the sessions of oyer and terminer and general gaol delivery for such next adjoining county; and the same proceedings and trial shall or may be had, and the same judgment shall or may be given, in such last-mentioned court of oyer and terminer or general gaol delivery, as would and might be had and given in cases of indictments or inquisitions for the like offences committed within such next adjoining counties.

And prosecutors shall enter into new recognizances.

Sentence may be executed either in the city &c. or such adjoining county.

5. And whereas it may be fit and expedient, that in certain cases the punishment should be inflicted and the sentence put in execution within the county of a city, county of a town, or town corporate, within which the offence shall have been committed; be it therefore enacted, that it shall and may be lawful for the court, before which any conviction shall have taken place, in pursuance of the provisions of this act, to order every the person convicted to be punished according to law, either within the county where such conviction shall have taken place, or within the county of a city, county of a town, or town corporate, wherein such offence shall have been committed; and in cases where the court shall order such convict to be punished within such county of a city, county of a

**T**own, or town corporate, it shall and may be lawful for the court, after passing sentence upon every or any such convict, to order every or any such convict to be delivered into the custody of the sheriff or sheriffs, gaoler, or other proper officer or officers of such county of a city, county of a town, or town corporate; and the sheriff or sheriffs, or gaoler, or other proper officer or officers of such county of a city, county of a town, or town corporate is and are hereby commanded to receive into his or their custody every such convict or convicts, and to execute the sentence so passed upon such convict or convicts in such adjoining county, as if such convict or convicts had been tried, and had received such sentence in such county of a city, county of a town, or town corporate. 6 G. 4, c. 51.

**6.** That it shall and may be lawful for any of the judges of his majesty's court of King's Bench in Ireland, or any of the justices of oyer and terminer or general gaol delivery, for any such next adjoining county as aforesaid, upon the application of any such prosecutor or prosecutors, ten days next before the holding of any sessions of oyer and terminer or general gaol delivery for such last-mentioned county, by proper writs of habeas corpus, which they are hereby empowered and authorized to issue, to cause any person or persons who may be in the custody of any sheriff or sheriffs, or of the keepers of any gaol or prison charged with any offence or offences committed within any county of a city, county of a town, or town corporate, to be removed into the custody of the sheriff of such next adjoining county, in order that such person or persons may, for such offence or offences as aforesaid, be tried in such last-mentioned county, and, by order under the hand of any one of the said judges or justices of oyer and terminer and general gaol delivery, to direct the coroner or coroners of any such county of a city, county of a town, or town corporate, or other franchise, to return to the next court of oyer and terminer or general gaol delivery, to be holden for such next adjoining county, any inquisition, examination, or deposition taken, touching the death of any person or persons within the limits of his or their jurisdictions; and that whenever, in pursuance of this act, any bill or bills of indictment shall be found by such grand jury as aforesaid, against any person or persons, for any offence or offences committed, or charged to be committed within any county of a city, county of a town, or town corporate, it shall and may be lawful for the said courts of oyer and terminer and general gaol delivery, to issue process for apprehending the person or persons against whom such bill or bills of indictment shall be found, if not in custody, and to compel the attendance of witnesses upon the trial of such indictments, in like manner as in cases of indictments found in any such court of oyer and terminer or general gaol delivery, for offences committed within such adjoining counties.

Judges of K. B. may cause defendants to be removed for trial to next adjoining county.

And may direct coroners to return inquisitions &c.

And may issue process for apprehending offenders in adjoining counties.

6 G. 4, c. 51.

Recognizances to prosecute in city &c., forfeited by non-appearance in adjoining county, if notice have been given.

7. That every recognizance which, after the passing of act, shall be entered into, for the prosecution of any person or persons for any offence or offences committed or alleged to be committed within any county of a city, county of a town or town corporate in Ireland, or within any liberty or franchise, and every recognizance for the appearance, as well of persons as of witnesses to give evidence upon any bill of indictment to be preferred, or any inquisition found for any such offence or offences as aforesaid, as for the appearance of any person or persons to answer our lord the king for or concerning the same, shall be forfeited, if the prosecutor shall, ten days previous to the holding of the next court of oyer and terminer, or gaol delivery in the next adjoining county, give notice to the person bound in such recognizance to give evidence upon such bill of indictment or to answer to our said lord the king as aforesaid, of the intention to prefer such indictment in, or to remove such inquisition into, the next adjoining or other county, and the party bound in such recognizance shall not appear, prosecute or give, or be ready to give evidence at such court; but the person bound in such recognizance, after notice as aforesaid, shall appear at such court of the next adjoining county and shall prosecute and give, or be ready to give evidence on such indictment before the grand jury, and on the trial thereof on the trial of such inquisition, then the said recognizance shall be discharged, in such and the like manner as if the person bound in such recognizance had complied with the conditions thereof.

Notice left at residence of recognisor sufficient

8. That in case the person or persons who shall enter into such recognizance or recognizances as aforesaid, cannot be found, and such notice as aforesaid be left at his, her, or their usual place of abode, ten days previous to the holding of such court as aforesaid, the same shall be as good and effectual as if the same were left with the person or persons entering into such recognizance or recognizances; and that no such recognizance shall be estreated or returned into the court of Exchequer, or into the next following sessions of oyer and terminer or gaol delivery, to be holden for such next adjoining county, in order that such recognizance or recognizances may be charged, in case the person or persons who shall have entered into the same, shall shew to such court of oyer and terminer or general gaol delivery, sufficient cause for discharging the same.

Recognizance not to be estreated till next sessions of O. & T. for adjoining county.

Recognizances and examinations shall be returned to next court of O. & T. after notice given of intention to prosecute.

9. That all and every person and persons, before whom such recognizance or recognizances as aforesaid shall be entered into, or by whom any examination or deposition shall be taken, touching any such offence or offences as aforesaid, and they are hereby required to return the same to the court of oyer and terminer and general gaol delivery, for the next adjoining county as aforesaid, upon such prosecution

prosecutors as aforesaid leaving at the dwelling house or other place of abode of the person or persons before whom such recognizances shall be entered into, or by whom such examination or deposition shall be taken, ten days before the holding of any sessions of oyer and terminer or general gaol delivery for such next adjoining county as aforesaid, notice in writing of his, her, or their intention to prosecute such indictment or inquisition at such last-mentioned sessions of oyer and terminer or general gaol delivery, for any offence or offences committed within any county of a city, county of a town, or town corporate; and that, after the delivery as aforesaid of any of the said notices, it shall not be lawful for any person or persons to prefer any bill or bills of indictment, or to return any inquisition for any offence or offences mentioned in the said recognizances or any of them, at or to any sessions of oyer and terminer or general gaol delivery for any such county of a city, county of a town, or town corporate.

6 G. 4, c. 51.

10. That in all cases of indictments and other proceedings which may be tried before his majesty's justices of oyer and terminer or general gaol delivery for any county, in pursuance of the provisions contained in this act; it shall and may be lawful for such justices to order the expenses of the prosecution and of the witnesses, and of the several rewards payable in pursuance of the statutes in such cases made and provided, on the conviction of offenders, to be paid by and to the same persons and in the same manner as the same would be payable, if such indictments had been tried in the court of oyer and terminer or general gaol delivery of any such county of a city, county of a town, or town corporate.

Judges may order expenses of prosecution to be paid.

11. [*Justices of oyer and terminer of adjoining county, may order all expenses incurred by such trial to be repaid to the treasurer of such county, or the person who shall have actually paid them, by the person who would have been liable to pay, in case the trial had been in the county of a city, &c.*]

12. [*All other rights of corporations, save as herein, shall remain entire. They shall not be obliged to attend as jurors upon any trial in the adjoining county.*]

13. Provided also, and be it enacted, that nothing in this act contained shall extend or be construed to extend to enable any person to prefer any bill of indictment for any offence committed or charged to be committed within any county of a city, county of a town, or town corporate, to the jury of such next adjoining county as aforesaid, or to remove any indictment or other criminal proceedings, except the person preferring such bill, or applying for such removal, shall enter into a recognizance before the court where such bill shall be preferred, or the court or magistrate to whom such application shall be made, as the case may be, in the sum of forty pounds, conditioned to pay the extra costs attending the prosecuting for

Trial not to be removed to adjoining county, unless recognizance for extra costs.

6 G. 4, c. 51. such offence, in such next adjoining county; provided the court before whom the trial shall be had, shall be of opinion that such person ought to pay the same.

The act 6 G. 4, c. 51, s. 2, extended to indictments found by term grand juries.

3 & 4 Will. 4, c. 91(a), s. 31. [*Recites* 6 Geo. 4, c. 51, s. 2.] And whereas it is expedient that the said provisions of the said last-mentioned act should be applied to indictments found by term grand juries of the county or county of the city of Dublin, in his majesty's court of King's Bench in Ireland; be it therefore enacted, that so much of the said act of the sixth year of the reign of king George the Fourth, as is hereinbefore specified, shall apply and extend to, and include any indictment found by any term grand jury of the county of Dublin, or of the county of the city of Dublin, in his majesty's court of King's Bench in Ireland, in like manner, to all intents and purposes, as in the case of an indictment removed into the said court by writ of certiorari.

Offences committed on the boundaries of counties may be tried in either.

9 Geo. 4, c. 54, s. 26. And for the more effectual prosecution of offences committed near the boundaries of counties, or partly in one county and partly in another, be it enacted, that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one county, and completed in another; every such felony or misdemeanor may be dealt with, inquired of, tried, determined, and punished in any of the said counties, in the same manner as if it had been actually and wholly committed therein.

Offences committed during a journey or voyage, may be tried in any county through which the vehicle has passed


27. And for the more effectual prosecution of offences committed during journeys from place to place; be it enacted, that where any felony or misdemeanor shall be committed on any person, or on or in respect of any property in or upon any coach, waggon, cart, or other carriage whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property on board any vessel whatever, employed in any voyage or journey upon any navigable river, canal, or inland navigation; such felony or misdemeanor may be dealt with, inquired of, tried, determined, and punished in any county through any part whereof such coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county; and in all cases where the side, centre, or other part of any highway, or the side, bank, centre, or other part of any such river, canal, or navigation shall constitute the boundary of any two counties,

Where the highway divides two counties, the offender may be tried in either.

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(a) Entitled "*An Act for consolidating and amending the laws relative to jurors and juries in Ireland.*"

such felony or misdemeanor may be dealt with, inquired of, tried, determined, and punished in either of such counties, through, or adjoining to, or by the boundary of any part whereof, such coach, cart, waggon, carriage, or vessel shall have passed in the course of the journey or voyage, during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county(a).

9 G. 4, c. 54.  


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(a) For the law on the subject of the venue of criminal prosecutions, see *Archb. Pl. & Ev.* 19 (5th Ed.), *et seq.*



## CHAPTER VI.

### OF THE GRAND JURY.

**25 Edw. 3, St. 5, c. 4, Eng. [*Recites Magna Charta, c. 29, &c.*]**

None shall be  
condemned  
without law-  
ful present-  
ment.

(2) It is accorded, assented, and stablished, that from henceforth none shall be taken, by petition or suggestion made to our lord the king, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; (3) nor that none be out of his franchises, nor of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of the law; (4) and if any thing be done against the same, it shall be redressed, and holden for none.

Grand jurors  
shall receive  
the evidence  
of crown wit-  
nesses before  
they find bills.

**56 Geo. 3, c. 87 (a), s. 1.**—Whereas a practice hath prevailed in many of the grand juries in Ireland, to find bills of indictment without examining witnesses for the crown; and it is expedient that this practice should for the future be discontinued; be it therefore &c., that from and after the passing of this act, no bill of indictment shall be returned a true bill, by any grand jury in Ireland, unless the same hath been found by the jurors, upon the evidence of one or more witnesses for the crown, sworn in court (b) and produced before them, with such other lawful evidence as the nature of the case may require or admit of.

Depositions  
before ma-  
gistrates, may  
be laid before  
the grand  
jury, and if  
there be false  
swearing, it  
shall be re-  
ported to the  
court,

2. Provided always, and be it enacted, that nothing in the present act contained shall be construed to prevent such court, at its discretion, from directing the informations or depositions which such witness or witnesses for the crown may have previously sworn before a magistrate, to be laid before the grand jury; and if, upon the examination of such witness or witnesses before the grand jury, it shall appear to the said grand jury that any of the said witnesses shall have sworn falsely and corruptly, it shall and may be lawful for the said

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(a) Entitled, "*An act to regulate proceedings of grand juries in Ireland upon bills of indictment.*"

(b) A party cannot be legally convicted upon an indictment found by the grand jury, upon the testimony of witnesses who were sworn by an officer of the court of quarter sessions, after the sessions had lapsed for want of proper adjournment, 6 C. & P. 90.

grand jury, and they are hereby required to report the same to the court; and in case the court shall thereupon think fit to order a bill of indictment for wilful and corrupt perjury to be preferred against such person, it shall be competent for any of the said grand jurors to give evidence upon the finding and trial of such indictment, notwithstanding the oath which he shall have previously taken as a grand juror, anything in this or in any other law or statute to the contrary notwithstanding; it being hereby expressly declared and enacted, that nothing herein contained shall be construed to have the effect of rendering such informations or depositions evidence in support of a bill before the grand jury, except as hereinafter provided.

56 G. 3, c. 87.  
who may order a prosecution for perjury, upon which any grand juror may give evidence.

3. [*Recites the 50 Geo. 3, c. 102, s. 5, post c. XI. p.* ]

Be it further enacted, that so long as the said recited enactment shall be in force, the informations or examinations therein mentioned shall be evidence to the grand jury upon the bill preferred against the person or persons against whom such information or examination was given: provided always, that the information or examination of a witness secreted shall not be evidence to the grand jury, unless it shall first be proved to the grand jury by witnesses sworn, or other lawful evidence, that the person so secreted has been secreted by the person or persons against whom the bill is preferred, or by some person or persons acting for him or her, or in his or her favour.

Informations of persons secreted or murdered, shall be evidence to grand juries.

6 & 7 Will. 4, c. 116(a), s. 29. [*The sheriff of each county shall, for the transaction of fiscal business, cause the grand jury to be impannelled, not more than five, and not less than one clear day previous to the opening of the commission for holding the assizes.*]

30. [*The oath of grand jurors in Ireland shall not extend to bind them to secrecy in any other than matters of a criminal nature.*]

31. [*The sheriff shall place first on the grand jury panel, for each barony or half barony in the county (if there be ten or more such baronies or half baronies therein), the name of one £50 freeholder or £100 leaseholder, having lands to that amount therein, if such can be found, and may afterwards complete the panel as now by law authorized and directed.*] Provided always however, that any presentment or indictment formed or made by any grand jury in Ireland, shall not be liable to be traversed, quashed, or in any manner impeached, by reason of the grand jury not being selected as aforesaid; but any sheriff who shall wilfully omit or neglect to follow the rules hereby made for the selection of the grand jury, shall be liable,

Indictment not to be quashed, if grand jury not selected as herein, but sheriff to be fined.

6 & 7 W. 4, c.  
116.

on a complaint made to the judge of assize, to be fined for breach of the provisions of this act, such sum as such judge shall think proper, in addition to any other penalty or punishment to which he may by law be liable.

32. [*Stipendiary magistrates, treasurer of the county, secretary of the grand jury, surveyor, high constable or collector of any barony, clerk of the crown or peace, and coroners are disqualified to sit on grand juries of their counties.*]

Grand jury so  
impanelled,  
to be the  
grand inquest  
of the county.

33. That the said grand jury so impanelled as aforesaid shall be and be deemed to all intents and purposes to be, and shall constitute the grand inquest of the same county at and for the assizes then to be holden, and shall, save as hereinafter otherwise provided, perform and discharge, and be bound to perform and discharge all the duties, offices, and functions which any such grand jury might have performed and discharged, or would have been bound to perform and discharge, if the same were impanelled before the judge of assize in manner heretofore practised according to law, and subject to the like forfeitures, penalties, and liabilities; and shall possess and exercise all and every the powers, privileges, and authorities which grand juries impanelled before the judge of assize in manner hitherto accustomed, have possessed and exercised, or ought to possess or exercise, under and by virtue of the laws in force in Ireland, save as may be by this act otherwise provided. And such grand jury shall not depart, save in case of adjournment as hereinafter mentioned, until discharged by the judge of assize; and the assizes of each county shall, for the purposes of this act, but only as respects matters connected with presentments for raising or accounting for or paying money or relating to public works, be deemed to commence from the impannelling of such grand jury as aforesaid.

34. [*The grand jury, when so impanelled by the sheriff, shall do no other than fiscal business, until after the opening of the commission, and such fiscal business shall be then fully completed.*]

35. [*Provided that, upon a special application to the judge, he may authorize the subsequent transaction of it. The grand jury may also, at any time before they are discharged, present such sum as the court shall order for witnesses' expenses.*]

Presentment  
for expenses  
of witnesses  
in cases of  
felony.

105. That where any person shall have been tried for any felony whatsoever, it shall be lawful for the court before whom such person shall have been tried, in case it shall appear that there was a reasonable ground of prosecution, to order the treasurer of the county in which the offence shall have been, or shall have been alleged to have been committed, to pay to the prosecutor (a), upon his application, such sum of money as to

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(a) To entitle a party to his costs *as prosecutor*, and not merely *as witness*, it does not seem to be necessary that he should have been actually bound over by a magistrate, *R. v. Sheering*, 7 C. & P. 440.

such court shall seem reasonable, not exceeding the expenses which it shall appear to the court that such prosecutor may have bona fide incurred in carrying on such prosecution; and in case such prosecutor shall appear to the court to be in poor circumstances, such court may make a further reasonable allowance to such prosecutor for trouble and loss of time, which order the clerk of the crown or clerk of the peace respectively is hereby directed and required forthwith to make out and deliver to such prosecutor, without fee or reward; and when any person shall appear on recognizance or subpoena to give evidence as to any felony whatsoever, whether the prosecution of such felony be commenced or carried on by or under the direction of any law officer of the crown, or any other person, it shall be lawful for the court before which such person shall appear, whether any bill of indictment be preferred or not to any grand jury, in case such person shall bona fide have attended in obedience to such recognizance or subpoena, to order the treasurer of the county in which the offence shall have been, or shall have been supposed to have been committed, to pay unto such person such sum of money as shall seem reasonable, not exceeding the expenses which it shall appear that such person has bona fide incurred by reason of the said recognizance or subpoena; and in case such person shall appear to be in poor circumstances, such court may make a further reasonable allowance to such person for trouble and loss of time, which order the clerk of the crown or the clerk of the peace respectively is hereby directed and required forthwith to make out and deliver to such person; and such treasurer is hereby authorized and required, out of any public money in his hands, forthwith to pay to any such prosecutor or witness respectively, or to any person by him or her authorized, any such sum of money so ordered; and such treasurer shall be allowed the same in his accounts; and the grand jury of such county shall at each assizes present all sums so paid to such prosecutors and witnesses respectively, to be raised either off the county at large, or upon any barony thereof, as to such grand jury shall seem fit; and such presentment may be made without any previous application to presentment sessions.

106. That if it shall appear that any person, having given information or evidence against any person or persons charged with any offence against the public peace, shall have been murdered or maimed previous to the trial of the person or persons accused by such information or evidence, or of any of them, or on account of any such evidence given, or that any magistrate or other peace officer shall be murdered or maimed on account of his exertions as such magistrate or peace officer to bring disturbers of the public peace to justice, it shall and may be lawful to and for the grand jury of the county within which such murder or maiming shall have been committed,

6 & 7 W. 4, c.  
116.



Presentment  
in cases of  
persons  
maimed or  
murdered.

6 & 7 W. 4, c.  
116.



respectively, to present such sum or sums of money as they shall think just and reasonable, to be paid to the person representative of such witness, magistrate, or peace officer murdered, or to such witness, magistrate, or peace officer maimed, having regard to the rank, degree, situation, and circumstance of such witness, magistrate, or peace officer; such money to be raised off the county at large, or the town in which such murder or maiming shall respectively have been perpetrated, at the discretion of such grand jury.

Presentment  
for rewards to  
prosecutors of  
felons.

107. That it shall and may be lawful for the grand jury of any county at any assizes, if they shall think fit, to present without any previous application at sessions, any sum of money not exceeding the sum of twenty pounds, for each and every person who shall apprehend and prosecute to conviction any person guilty of any murder, and any sum not exceeding five pounds, for each and every person who shall apprehend and prosecute to conviction any person guilty of any other felony, or misdemeanor for which any person on conviction may be liable to be transported; such sum or sums to be raised out of such county or any barony thereof, as such grand jury shall think proper, and to be paid to any prosecutor or prosecutors of such offenders as aforesaid; and such presentment may be made during the time appointed for transacting the criminal business of such county.

Presentment  
for expense  
of removing  
offenders.

108. That the grand jury of any county where any offence shall have been committed, shall present, to be levied off such county, the expenses attending the removal thereto of any prisoner apprehended according to law in any other part of the united kingdom; provided that, with an application made by the treasurer of the county to the next county presentment after such expenses shall have been repaid by him, there shall be laid by such treasurer before such sessions the accounts of such expenses, verified as by law required, which he shall have repaid the same, and that such application and account shall be approved at such sessions.

Compensation shall be  
granted for  
malicious  
injuries.

135. That from and after the commencement of this act, in all cases of maliciously or wantonly setting fire to, burning, or destroying any house, outhouse, or other building, or of maliciously setting fire to, burning, or sinking any boat or barge laden with any goods, or other provisions, or of maliciously killing, maiming, or injuring any horse, mule, ass, or swine, or any cattle or sheep, or of maliciously damaging, injuring, or destroying any bank, gate, lock, weir, sluice, bridge, or other work belonging to any person, public canal, or navigation; any person or persons injured by any such offence intending to apply for compensation for any loss or damage sustained thereby, shall serve notice in writing of such offence and of such his or their intention, upon the high constable

Notice of  
application.

the barony, and the churchwardens of the parish, and at the nearest police station, or, if there be no churchwarden, upon two of the principal inhabitants of the parish wherein such offence shall have been committed, within six days at least after the commission of the same, and shall lodge with the high constable or secretary of the grand jury, in like manner and time as applications for presentments for public works are hereinbefore directed to be lodged, an application, setting forth the loss or damage occasioned by such offence, and stating the time and place when and where such injury was done, the particular property consumed, injured, or destroyed, and the amount of damage thereby sustained, and by what number of persons, and whom by name and description, such injury was done, if such offender or offenders shall be known, and if not, stating such particulars respecting such offender or offenders as may be known; and like notices shall be posted of such applications as hereinbefore prescribed, in cases of other applications to presentment sessions; and such application shall be scheduled by the secretary of the grand jury, and by him dealt with in all respects as other applications under this act; and the presentment sessions shall examine into the serving and posting the notices of such application, and into the merits of the same, and the chairman shall indorse their opinion thereupon; and such secretary shall deliver such application so indorsed to the grand jury at the next assizes; and the said grand jury shall, during the time appointed for transacting the fiscal business of the county, examine into the matter of such application, upon the oath of the party injured, or such other evidence as can be produced touching the said offence; and the said grand jury shall, on the consideration of the said matter, either disallow such application altogether, or present such sum or sums of money as the person or persons so injured ought to receive for such injury or damage, to be levied off the county at large, or such barony, parish, district, townland, or sub-denomination thereof, as the grand jury shall direct.

6 & 7 W. 4, c.  
116.

136. That every application under this act for compensation for loss or damage occasioned by any malicious injury as aforesaid, shall be made at the next presentment sessions which shall be holden after the commission of such offence for the barony, county of a city, or county of a town, where the same shall have been committed, unless any such malicious injury shall have been done after the day appointed for holding the first presentment sessions after the assizes for the county in which such injury shall have been done, or so near the day of holding the same, that such application for compensation cannot be duly lodged as hereinbefore directed; in either of which cases, the person or persons so injured shall make such application at the presentment sessions which shall be holden next but one after the time of the commission of such offence.

Applications  
when and  
where to be  
made.

6 & 7 W. 4, c. 116. for the barony, county of a city, or county of a town, or the same shall have been committed; and the notice of application shall be posted accordingly; and it shall be lawful for any grand jury to make any presentment for compensation for malicious injury under the provisions of this act, except at the assizes next ensuing to the sessions where such application shall have been made therefor.

Persons injured shall lodge examinations within three days.

137. Provided always, and be it enacted, that every person or persons who shall, under the provisions of this act, be liable for compensation for any loss or damage occasioned by malicious injury as aforesaid, shall, within three days after the commission of the said injury, unless prevented by illness or other sufficient cause, give in his, her, or their examination upon oath, or that examination upon oath shall be given by his, her, or their servant or servants, who had the care of his, her, or their property so injured, before some justice of the peace of the county where such injury shall have been committed, thereby specifying whether he, she, or they do believe the person or persons who committed the said injury, or any of them; and in such case, such examinant or examinants shall be bound by recognizance to prosecute such offender or offenders by indictment or otherwise according to the laws of this kingdom.

When presentment is opposed or application disallowed, a jury may be sworn to try the matter.

138. That all such applications whatsoever for compensation for loss or damage sustained by malicious injury, shall be presented by the acting clerk of the crown before the judge of the county upon his arrival: and in case any person paying ground rent or cess for the county or barony chargeable with the sum payable by the grand jury upon any such application, shall be liable for opposing any such presentment, or in case any person who has applied for compensation shall have been disallowed by the grand jury, shall wish to have his or their application considered, such cess payer or person or persons applying for compensation shall be heard; and in either of such cases the judge, if he shall so think fit, shall direct a jury to be forthwith impannelled to try the matter of such presentment or application respectively; and, according as the issue shall be found for or against such cess payer, the judge shall direct the jury to alter, or fiat such presentment; and in case of application for compensation being allowed, if the issue shall be found for the person or persons applying for compensation, the judge shall direct the jury to make presentment thereupon accordingly, and if such application shall be discharged; and all verdicts given by a jury impannelled as aforesaid to try any such issues shall be final and conclusive to all persons whatsoever; and it shall be lawful for the said judge to award, by rule for that purpose, costs to the parties for whom the issue shall be found, and to the other party or parties respectively, in any sum not exceeding ten pounds sterling; and the said judge is hereby

to direct and issue forthwith an order or orders in the 6 & 7 W. 4, c. 116.  
 re of execution against such last mentioned party or par-  
 respectively, which said order or orders the sheriff of such  
 ty is hereby required to execute in the same manner as  
 ases of executions against the chattels and effects of de-  
 ants.

39. [*No presentment for such compensation shall be removed  
 certiorari, or quashed for informality; and no traverse shall  
 received thereto; and no action for damages from such injury  
 be sustained against any chief magistrate, inhabitant of  
 parish, or other person whatever.*]

40. Provided also, and be it further enacted, that in case  
 a burning or other malicious injury as aforesaid shall be  
 mitted on the verge, or within the distance of one mile (a) of  
 boundary of any two or more counties, the person or persons  
 shall sustain such injury may apply for compensation in  
 manner hereinbefore directed, in either or any one of such  
 neighbouring counties; and all proceedings shall be taken  
 thereupon, as hereinbefore provided with respect to other  
 applications for damages for malicious injury; and in case  
 a sum or sums of money shall be presented by the grand  
 jury of the county where such application shall be made,  
 shall be finally awarded by the verdict of any jury, as  
 for compensation to the person or persons applying as  
 aforesaid, the judge at the assizes of such county shall have  
 power and authority to apportion the amount of such com-  
 pensation amongst such neighbouring counties, and shall  
 direct the proportion of the same which shall be paid by them  
 respectively, and shall certify the same accordingly; and such  
 presentment shall thereupon be diminished, or presentment  
 made, according to the proportion which the said judge shall  
 direct to be paid by such county; and the grand jury or grand  
 juries of the said other neighbouring county or counties respec-  
 tively, shall and they are hereby required, on the production  
 of the certificate of such judge, declaring the proportion to  
 be paid by such county or counties, to present such propor-  
 tion, when the same shall exceed one hundred pounds, to be  
 raised off the county at large; and if such proportion shall  
 be under one hundred pounds, to be raised off the barony or  
 manors in or near to which such injury shall be alleged to be  
 committed, and paid to the person or persons so applying, as  
 the case may require.

141. That no fee shall be demanded from or paid by any  
 process payer or person applying, to the clerk of the crown,  
 the king's crier, or jury, for any matter or thing relating to any  
 such application, presentment, or trial.

No fees to  
 be paid on  
 applications  
 for compen-  
 sation.

173. [*The measures mentioned in this act shall be those fixed  
 5 Geo. 4, c. 74, and 5 & 6 Will. 4, c. 63.*]



## CHAPTER VII.

### OF PROCESS.

The accessory shall not be outlawed, until after attainder of the principal.

Justices of oyer and terminer may award outlawry process in felony to any county.

After indictment of felony, a capias shall be awarded; and upon *non est* *in*o. returned, another capias, re-

3 *Edw. 1*, (*Westm. I.*) *c. 14, Eng.* And forasmuch as it has been used in some counties to outlaw persons being appellants of commandment, force, aid, or receipt within the same county, that he which is appealed for the deed is outlawed; it is provided and granted by the king, that none be outlawed for appeal (a) of commandment, force, aid, or receipt (b), nor that he which is appealed of the deed be attainted, so that one like him may be used therein through the realm; (2) nevertheless, he which will so appeal shall not, by reason of this, intermit or leave to commence his appeal at the next county against them more than against their principles which he appealed of the deed; but their exigent shall remain until such as be appellants of the deed be attainted by outlawry or otherwise (c).

5 *Edw. 3*, *c. 11, Eng.* Item, Where in times past persons appealed or indicted of divers felonies in one county, or outlawed in the same county, have been dwelling or received in another county, whereby such felonious persons indicted and outlawed have been encouraged in their misdoings because they may not be attached in another county; (1) it is enacted, that the justices assigned to hear and determine felonies, shall direct their writs to all the counties of England where need shall be, to take such persons indicted.

25 *Edw. 3*, *St. 5, c. 14, Eng.* Item, It is accorded that after any man be indicted of felony before the justices in their sessions to hear and determine (d); it shall be commanded the sheriff to attach his body by writ or by precept, which is called a capias; (2) and if the sheriff return in the same manner or precept, that the body is not found, another writ or precept of capias (e), shall be incontinently made, returnable at

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(a) It seems to be agreed that this statute extends as well to indictments as appeals, 2 *Hawk. c. 27, s. 129*.

(b) i. e. of being accessories before or after the fact.

(c) If one exigent be awarded against the principal and accessory together, it is error only as to the accessory, *R. v. Yandell*, 4 *T. R.* 521.

(d) This statute applies only to the general sessions of the peace, and not to the courts of oyer and terminer in Green-street, or at the assizes, *Yandell*, 4 *T. R.* 538; 2 *Hawk. c. 27, s. 115*.

(e) This second, or alias capias, need not contain a command to the sheriff to seize the goods, *R. v. Yandell*, 2 *Hawk. c. 27, s. 115*.

weeks after; (3) and in the same writ or precept it shall be comprised, that the sheriff shall cause to be seized his chattels, and safely to keep them till the day of the writ or precept returned; (4) and if the sheriff return, that the body is not found, and the indictee cometh not, the exigend shall be awarded<sup>(a)</sup>, and the chattels shall be forfeit, as the law of the crown ordaineth; (5) but if he come and yield himself, or be taken by the sheriff, or by other minister, before the return of the second capias, then the goods and chattels shall be saved.

25 E. 3, St. 5.  
c. 14.

turnable in three weeks, shall issue; upon *non est inu.*, the *exigent* shall be awarded, and his goods forfeit.

6 Hen. 6, c. 1, Eng. [*Recites that indictments had been falsely preferred and found in the King's Bench against absent persons, in order to entail forfeitures upon them.*] (3) Our said lord the king, willing in this case to provide remedy, hath ordained by the advice and assent of the said lords, that before any exigent be awarded against such persons indicted before the king in his said bench, writs of capias shall be directed, as well to the sheriff or sheriffs of the county wherein they be indicted, as to the sheriff or sheriffs of the county whereof they be named in the indictments; (4) the same capias having the space of six weeks at the least, or longer time, by the discretion of the said justices, if the case require it, before the return of the same; (5) which writs so returned, the justices shall proceed in the manner as they have done before this time: (6) and if any exigent be awarded, or any outlawry pronounced hereafter against such persons indicted, before the return of the said writs, the same exigent so awarded, with the outlawry thereof pronounced, shall be void and holden for none. (7) And this ordinance shall indure as long as shall please the king.

No exigent shall be awarded against a person indicted in K. B., until capias have been awarded both to the county where indictment found and where the defendant is resident.

8 Hen. 6, c. 10, s. 1, Eng. [*Recites that persons had often been falsely indicted in counties where they were not resident, and thus, for want of appearance, they became outlawed, and their goods forfeit.*]

2. And therefore the same our lord the king, of his special grace, and by authority of this parliament, for ease and tranquillity of his faithful lieges of this realm, hath caused to be ordained and stablished, that upon every indictment or appeal, by the which any of the said lieges dwelling in other counties<sup>(b)</sup> then there where such indictment or appeal is or

Where persons reside in other counties than where the indictments are found, after capias

(a) After the sheriff hath returned *cepi*, if he have not the body at the day, the court will not award an exigent on the suggestion of an escape, unless the sheriff will return one, 2 Hawk. c. 27, s. 117.

(b) If the defendant be described in the indictment as "A. B. in the county of L." *alias* "C. D. of the county of M." the case does not come within this statute, because that which comes under the *alias dictus* is no way traversable or material. If he be named as of the county of L. and late

8 H. 6. c. 10.

and before  
exigent,  
another  
capias shall  
be awarded  
to the sheriff  
of their  
counties.

And if he be  
not found by  
such sheriff,  
proclamation  
shall be made.

Exigents  
awarded  
contrary  
hereto shall  
be void.

shall be taken of treason, felony, and trespass, to be taken hereafter before the justices of peace, or before any other having power to take such indictments *or appeals*, or other commissioners or justices in any county, franchise, or liberty of England, before any exigent awarded upon any indictment *or appeal*, in the form aforesaid to be taken, that presently after the first writ of capias, upon every such indictment *or appeal* awarded and returned, that another writ of capias be awarded, directed to the sheriff of the county, whereof he which is so indicted is or was supposed to be conversant by the same indictment, returnable before the same justices or commissioners before whom he is indicted *or appealed* at a certain day, containing the space of three months from the date of the said last writ,\* where the counties be holden from month to month; and where the counties be holden from six weeks to six weeks, he shall have the space of four months, until the day of the return of the same writ; (2) by which writ of second capias, be it contained and commanded to the same sheriff, to take him which is so indicted *or appealed*, by his body, if he can be found within his bailiwick; (3) and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted *or appealed*, shall appear before the said justices or commissioners in the county, liberty, or franchise where he is indicted *or appealed*, at the day contained in the said last writ of capias, to answer to our lord the king, or to the party, of the felony, treason, or trespass, whereof he is so indicted *or appealed*; (4) after which second writ of capias so served and returned, if he which is so indicted *or appealed* come not at the day of the same writ of capias returned, the exigent shall be awarded against such persons indicted *or appealed*, and every of them.

3. And if any exigent hereafter be awarded upon any such indictment *or appeal*, against the form aforesaid, or any outlawry be upon that pronounced, as well the exigent so awarded, as the outlawry upon that pronounced, and every of them, shall be holden for none and void(a); (2) and that the party upon whom such exigent against the form aforesaid is awarded, or outlawry pronounced, be not endamaged, nor put to loss of his goods or chattels, lands or tenements, nor of his life.

4. [*Persons acquitted upon such indictments may have an*

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of the county of M., the *capias* need not go to the sheriff of M.; but if he be described as late of the county of M., and of the county of N. &c., without stating a present abode, the *capias* must run to all those counties, 2 Hawk. c. 27, s. 126.

(a) Not void, but only voidable on writ of error, 2 Hawk. c. 27, s. 126.


action against the procurers of them, and recover treble damages](a). 8 H. 6, c. 10.

6. Provided also, that if any of the said lieges, or any their heirs, be or shall be *appealed* or indicted of felony or treason, and at the time of the same felony or treason supposed, he is and was conversant within the county whereof the indictment or *appeal* maketh mention, the like process be made against such person so indicted or *appealed*, as hath been used always before this time(b). The ordinary process shall issue, if the party reside in the county where indictment found.

10 Hen. 6, c. 6, Eng. s. 1. [Recites 8 Hen. 6, c. 10, s. 2, down to \*]. (2) By which clause of the same statute, that is to say, returnable before the same justices or commissioners before whom he is indicted or *appealed*, some do think that the writ of *capias* ordained by the said statute which shall be directed to the sheriff of the county, whereof he that is so indicted or *appealed* is or was supposed to be conversant by the same indictment or *appeal*, shall be returned before the same justices or commissioners, or other before whom the indictment or *appeal* was taken, and not elsewhere. (3) And imagining to defraud and make frustrate the said statute, do sue to remove such indictments and *appeals* out of the hands of the justices or commissioners aforesaid, into the King's Bench and elsewhere, by *certiorari* and otherwise, unknown to the party so indicted or *appealed*, and thereupon sue the process used at the common law before the making of the said statute in the King's Bench and elsewhere, after the removing, to the great impoverishing and vexation of the king's faithful subjects. (4) Wherefore the same our lord the king, by the advice and assent aforesaid, and at the special request of the said commons, by authority aforesaid, hath ordained that the said statute be holden and kept, and put in due execution in all points; (5) joined to the same, that if any such indictments taken, or to be taken before any justices of peace, or before any other having power to take such indictments or *appeals*, or other justices or commissioners in any county, franchise, or liberty of England, shall be removed before the king in his bench or elsewhere, by *certiorari* or otherwise, then after such removing, before any exigent awarded upon any such indictment or *appeal* in the form aforesaid taken, or to be taken, that presently after the first writ of *capias* upon every such indictment or *appeal* awarded and returned, that another writ of *capias* be awarded, Confirmation of 8 H. 6, c. 10.  
After indictment removed into K. B. and before exigent awarded, another *capias* shall go to the sheriff of the county in which the defendant was resident.

(a) Which seemeth to be on account of the distance at which he is supposed to live from the place where he is indicted, and consequently his extraordinary trouble in that behalf, *Burn, J. Process* 1.

(b) i. e. as it was at common law. And this is the usual course at this day, that if the felony be committed in A, in the county of B, the indictment runs, "*quod I. S. nuper de A, in comitatu B, prædicto,*" where the indictment is taken, 2 *Hale*, 196.

10 H. 6, c. 6.  directed to the sheriff of the county, whereof he that is so indicted or appealed, is or was supposed to be conversant by the same indictment or appeal, returnable before the king in his bench at a certain day, containing the space of three months, or four from the date of the said last writ of capias, according to the manner and form that the justices of peace, and other in the said first statute contained, ought to have done, before such removing after the making of the said first statute; and moreover, to make process according to the effect and purport of the said first statute. (6) And if any such exigent be hereafter awarded upon any such indictment or appeal, after such removing against the form aforesaid, or any outlawry thereupon pronounced, as well the same exigent so awarded, as the outlawry thereupon to be pronounced, and every of them, shall be holden for none and void, according as in the said first statute is more fully contained.

Exigents upon outlawry in treason or felony, shall be awarded only out of K. B., or by the judges of liberties.

Persons charged with misdemeanor may be arrested by warrant of K. B. and held to bail.

33 Hen. 6, c. 1. At the request of the commons, where before this time divers commissioners of our sovereign lord the king, within this land of Ireland to hear, inquire, and determine of felonies, trespasses, and treasons, have put out process of outlawry against divers men before them indyted, as well against men dwelling in other shires, as within the same shire, where the said commissioners sit. And for that, that before commissioners there is no common dayes limited, as there is in the bench of the king, they will send one capias returnable at this day, and one alias returnable within two days then ensuing, and one pluries returnable within other two dayes then following; and that so done, then they will award one exigent, by the which exigent so awarded, the party shall lose his goods and chattels that not knowing; and so by such mean, every man dwelling in far shires may lose his goods and chattels, they not knowing. Whereupon, the premises considered, it is ordained and established by authority of the said council, that every exigent for the king, of felonies or treasons to be awarded be void, if not that it be in the bench of the king. And if it be within liberties, for lords of the said liberties, that then it be before their judges of their places, and not before commissioners.

48 Geo. 3, c. 58(a), s. 1. [*Recites the beneficial effects of the English acts, 26 Geo. 3, c. 77, s. 18, and 35 Geo. 3, c. 96.*] Be it &c., that whenever any person shall be charged with any offence for which he or she may be prosecuted by indictment or information in his majesty's court of King's Bench,

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(a) Entitled "*An act for amending the law with regard to the course of proceeding on indictments and informations in the court of King's Bench in certain cases; for authorizing the execution in Scotland of certain warrants issued for offences committed in England; and for requiring officers taking bail in the King's suit, to assign the bail-bonds to the king.*"

not being treason or felony, and the same shall be made appear to any judge of the same court by affidavit, or by certificate of an indictment or information being filed against such person in the said court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended and brought before him or some other judge of the same court, or before some one of his majesty's justices of the peace, in order to his or her being bound to the king's majesty with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively, to commit such person to the common gaol of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the said court in term time, or of one of the judges of the said court in vacation, and the recognizance to be thereupon taken, shall be returned and filed in the said court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction, shall have received judgment for the same, unless sooner ordered by the said court to be discharged; and that where any person, either by virtue of such warrant of commitment as aforesaid, or by virtue of any writ of *capias ad respondendum* issued out of the said court, is now detained, or shall hereafter be committed to and detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is, or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information as aforesaid, cause an appearance, and also a plea or demurrer to be entered in the said court to such indictment or information, an appearance and the plea of not guilty will be entered thereto, in the name of such person; and in case he or she shall thereupon, for the said space of eight days after such delivery of a copy of the indictment or information as aforesaid, neglect to cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, it shall be lawful for the prosecutor of such indictment or information, upon an affidavit being made and filed in the said court, of the delivery of a copy of such indictment or information with such notice indorsed thereon as aforesaid, to such person, or to such gaoler, keeper, or turnkey,

48 G. 3, c. 58.

A party so in custody for want of bail, shall plead in eight days after delivery of a copy of indictment or information.

48 G. 3, c. 58. as the case may be, which affidavit may be made before any judge or commissioner of the said court, authorized to take affidavits in the said court, to cause an appearance and the plea of not guilty to be entered in the said court to such indictment or information, for such person, and such proceeding shall be had thereupon, as if the defendant in such indictment or information had appeared and pleaded not guilty, according to the usual course of the said court; and that if, upon the trial of such indictment or information, any defendant so committed and detained as aforesaid, shall be acquitted of all the offences therein charged upon him or her, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the said court of King's Bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly.

**NOTE.**  
Where process shall issue.

Process is so called, because it proceeds or issues forth, in order to bring the defendant to answer the charge preferred against him; and signifies the writs or judicial means by which he is brought to answer, *Burn, J. Process*; and therefore, from the nature of the thing, there is no need of process when the party is already in custody, 2 *Hawk. c. 27*. He may then be brought up and charged with the indictment, 1 *Ch. C. L. 338*. But if he appear voluntarily in court, it is discretionary in the court whether he shall be detained, or left for apprehension under legal process, *R. v. Wilkes, 4 Burr, 2531*.

By whom it may be issued.

The power to issue process is incident to every court which has authority of *oyer and terminer*; for there cannot be *oyer*, if the party do not appear *gratis*, or be brought by process, *Com. Dig. Process, A. 1*; but this does not extend to justices of gaol delivery, as those they have to do with are always intended in custody already, 2 *Hale, 198*.

Form of the process.

All process out of the king's courts ought to be in the name of the king, *Com. Dig. Process, A. 2*. If it issue from the court of King's Bench, it ought to be tested by the chief justice, or by the senior judge if that office be vacant; and if it issue from any other court, it ought to be under the test of the chief person in the commission. At sessions, it seems a single magistrate may test the process, 2 *Hawk. c. 27, s. 8*. It is always addressed to the sheriff of the county, except in cases where the sheriff himself may be a party, or interested. It is always with a *non omittas*; and therefore, the sheriff may enter into any liberty to execute it, 2 *Hale, 202*.

In cases of misdemeanor, the ordinary mode of making a defendant amenable after indictment found against him, is by a bench-warrant. It may be obtained by the prosecutor, on application to the clerk of the crown or peace, at any time during the same assizes or sessions, after the indictment has been found, if the defendant be not under recognizance then to appear. If so, and having the whole of such assizes or sessions to appear, the prosecutor may bespeak a bench-warrant, which, at the close thereof, will issue in case of his non-appearance. After the assizes or sessions have closed, no bench-warrant can issue. The course then is for the prosecutor to obtain a certificate of the finding of the indictment from the clerk of the crown or peace, which, being produced to a judge or justice of the peace, he will issue his warrant, *R. v. Stokes*, 5 C. & P. 148; and, in cases of indictments in the King's Bench, this certificate, it appears, may be obtained at the crown office, without taking out an office copy of the indictment, *R. v. Redfern*, 2 Ad. & Ell. 387. This warrant, if issued by a justice, ought of course to be backed before it is executed out of his county. The defendant having been arrested, he must find bail, or be committed. The justice who takes the bail, may insist that the prosecutor shall have at least twenty-four hours' notice of the names and residences of the bail, in order to inquire of their sufficiency, as householders or freeholders, 1 Ch. C. L. 344. Before the party has been arrested, and if he suspect that an indictment has been found against him, he may obtain a certificate of the fact from the clerk of the crown or peace, and attend with this certificate and his bail before a justice, who, upon perfecting the bail, will grant him a supersedeas to protect him from future arrest on the same ground, 1 Ch. C. L. 346.

NOTE.  
Bench war-  
rant.

Of bail.

Of super-  
sedeas.

Should it be found impossible to make the defendant amenable in cases of misdemeanor, by the above summary process, or in case of felony, by the *capias*, which we shall shortly consider, it may then be advisable to proceed to outlawry if practicable; and here it may be proper to remark, that the most scrupulous exactness is necessary in every part of the proceedings. Very trivial flaws are sufficient to render all the proceedings nugatory, *R. v. Almon*, 5 T. R. 204.

Of process to  
outlawry.

Process of outlawry lies in all cases of treason and felony, and on all indictments for forcible injuries, deceit, conspiracy, trespass *vi et armis*, or other more heinous offence. So also it lies on all returns of a rescous, and on an information for a libel *ex officio* by the attorney general, 2 Hale, 194; 2 Hawk. c. 27, s. 109. It lies against all persons whatever above the age of fourteen years, in cases of treason, felony, or actual breach of the peace; but, except in those cases, peers are not subject to it, 2 Hale, 199; Bac. Abr. "Outlawry," C. Even

Where it lies.



## NOTE.

women are liable to it; but they are said to be waived, not outlawed, *Id. ibid.* Outlawry against a person under fourteen is not absolutely void; but only reversible on writ of error. So also it has been held erroneous, when the return to an exigent against a woman stated her as outlawed, 2 *Rel. Abr.* 804, 5.

By what  
courts it may  
be issued.

The court of King's Bench has power to issue outlawry process in all cases where it lies, whether upon indictments originally found there, or removed to it by certiorari; and such process will run into any county of Ireland, upon a *non est inventus* returned by the sheriff of the county where the party is indicted, and a *testatum* that he is in some other county, 2 *Hale*, 198. Justices of oyer and terminer can issue this process only upon indictments found before themselves, or remitted from sessions, *Bac. Abr. Outlawry, B.* Upon indictments for treason or felony, this process cannot go beyond an *alias* or *pluries capias*, 33 *H.* 6, c. 1; but in felony, *testatum* writs of *capias* may issue into any county of Ireland, 5 *E.* 3, c. 11, *Eng.* The jurisdiction of the sessions of the peace is still more limited; for, in addition, the writs which issue from that court only run into the county for which it acts, 2 *Hawk. c.* 27, s. 3; although this has been doubted, *Starkie* 259; and in misdemeanors, it cannot issue a *capias utlagatum*, 2 *Hale*, 199; *Dalt. J. c.* 193. Whenever therefore, the jurisdiction of these inferior courts is exhausted, or otherwise becomes ineffectual, the record must be removed into the King's Bench, that the process may be proceeded with, 2 *Hale*, 52.

Of the pro-  
cess in cases  
of misdemea-  
nor.

Venire.

Distringas.

Capias.

Exigent.

Upon indictments for misdemeanor, the first process is a *venire*, which operates as a mere summons to appear. If it issue from a court of oyer and terminer, or from the king's bench on an indictment found in the county or city of Dublin, it may be made returnable *immédiaté*; but if from the sessions of the peace, or from the king's bench upon an indictment removed there from any other county, there must be fifteen days between the teste and return, *Anon*, 3 *Salk.* 371; 2 *Hawk. c.* 27, s. 16. If the defendant do not appear after the sheriff has returned that he has been summoned, and that he has lands within the bailiwick, he is then proceeded against by *distringas* issued from time to time, whereby he forfeits issues on every default, 4 *Bl. Com.* 318; 2 *Hawk. c.* 27, s. 9. But if the return be *nihil*, the succeeding writs are a *capias*, *alias*, and *pluries*, issued successively after a return of *non est inventus* on the preceding, *Id. ibid.* If all this prove ineffectual, or if he have been taken and escaped, an *exigent* is awarded against him, 1 *Ch. C. L.* 353; 2 *Hawk. c.* 27, s. 117. This writ must always be directed to the officer of the county where the offence is laid in the indictment, 2 *Hawk. c.* 27, s. 119. By it, the sheriff is commanded to cause to be called

the defendant from county court to county court, until he be outlawed if he shall not appear, and if he should appear, then that the sheriff keep him in custody, so that he have him before the justices &c. Upon this writ, the sheriff calls or exacts the defendant at five successive county courts before the return of the exigent, and if there be the least interruption, the whole is void, and an *exigi facias de novo* must be awarded and issued, 2 *Hale* 201; *Imp. Off. Sher.* 327. If there be not five county courts before the return, an *allocatur exigent* issues upon his returning that fact, requiring him to make up the full complement of exactions, *Id. ibid.* If there has been a change of sheriffs, after one or more exactions, the sheriff hands over the writ to his successor, who returns it; and it need not be shewn in the record, that the latter was the immediate successor, for that will be intended, *R. v. Yandell*, 4 *T. R.* 526. The return to the exigent ought to be very certain and precise, both as to the time and place of the exactions; in order that it may appear that they were made in the proper county, and at intervals of at least one lunar month, 2 *Hale*, 203; *R. v. Wilkes*, 4 *Burr.* 2563; *R. v. Almon*, 5 *T. R.* 202; *R. v. Perry*, 6 *T. R.* 573. It should state also, that the defendant did not appear and render himself, or if against two or more, that neither of them appeared or did so. If the defendant does not appear, nor is taken, on or before the fifth exaction, judgment of outlawry is pronounced by the coroner; and his name and office being subscribed to the judgment, it is returned with the exigent and proceedings thereon by the sheriff, 2 *Hale*, 204; *R. v. Yandell*, 4 *T. R.* 521. In treason and felony, the proceedings, on account of the greater heinousness of the crimes, are more summary. No venire then issues. A *capias* is the first process. In treason and homicide, only one *capias* is issued. In all other felonies, two *capiases* are necessary; and in practice three are usually issued, 2 *Hale*, 194; *R. v. Yandell*, 4 *T. R.* 523.

NOTE.

Judgment of outlawry.

Process in treason and felony.

Concerning the execution of the process, it is laid down that wherever the king is a party, the process ought to be executed by the sheriff himself, and not by any bailiff of a franchise, whether the defendant be within a franchise or not, unless in the grant of the franchise there be special mention made of cases where the king is a party, 2 *Hawk*, c. 27, s. 17. As to the mode of executing the process see *ante* 471.

By whom the process is to be executed.

The very issuing of the exigent in case of treason or felony gives to the king the forfeiture of the goods of the party from the time of the teste of the writ of exigent; and the forfeiture by the exigent awarded, stands, although the indictment be quashed, until there be a judgment of reversal on a writ of error; because the king's title, being of record, must be awarded by a record 2 *Hale*, 204, 205.

Effect of the exigent.

**NOTE.**  
Effect of a  
judgment of  
outlawry.

Of the rever-  
sal of the  
outlawry.

In treason and felony, a judgment of outlawry returned of record operates in all respects as a conviction. The usual forfeitures are incurred; and the party, if afterwards taken, may be brought up before the justices of gaol delivery, and receive his sentence. Accessories also, who could not have been punished until after the conviction of the principal, may then be dealt with according to their offences, and the process which could not have proceeded against them beyond the last capias, may now go on to judgment. 2 *Hale*, 206; *R. v. Yandell*, 4 *T.R.* 253; *R. v. Wilkes*, 4 *Burr.* 2549; *Bac. Abr. Outlawry*; 4 *Bl. Com.* 320. In misdemeanor, it operates as a conviction for a contempt in not answering, and subjects the party to forfeiture of goods and chattels; and, generally speaking, the same consequences as upon an outlawry in a civil action, *Bac. Abr. Outlawry*, 4 *Bl. Com.* 319. An outlawry can only be reversed by writ of error, which is obtained by the appearance of the defendant in the court of king's bench in custody, and upon the fiat of the attorney-general, after the errors (whether they be of law or fact, 2 *Hale*, 207,) intended to be relied on are disclosed to him, 2 *Hale*, 209; *R. v. Wilkes*, 4 *Burr.* 2550. If the fiat be granted, the record and proceedings are removed into that court, where the errors are assigned and argued. Should the judgment of the court be unfavourable, sentence is immediately pronounced in cases of felony and treason, 2 *Hale*, 209; *R. v. Yandell*, 4 *T. R.* 521.

**FORM.**  
Bench  
warrant.

County of S. }  
to wit. }

By the lords justices of assizes for the  
circuit.

At a general assizes and general gaol delivery, held at T.  
in and for the county of S, on the                      day of

Whereas A. B. of &c. stands indicted as of                      assizes,  
with having &c., and has not since appeared or given security  
to abide trial on said indictment.

These are, therefore, in his majesty's name, to authorize  
and strictly charge and command you and every of you, im-  
mediately on sight or receipt hereof, to apprehend the body  
of the said A. B. wheresoever he may be found within the  
said circuit, and him so apprehended, forthwith in safe custody  
to convey before one of his majesty's justices of and for the  
county wherein he shall be apprehended, that he may be further  
dealt with according to law. And for your or every or any of

our so doing this shall be your sufficient warrant. Sealed and  
dated as above.

FORM.

By the court. Seal.

R. S. { Clerk of the crown for  
the county of S. (a)

To all sheriffs, peace officers, and  
constables, within and through-  
out the said circuit, and their  
respective assistants.

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(a) For the forms of the several writs of *venire*, *distringas*, *capias*, and  
*subpoena*, see *Burn. J. Process, ad finem*. And for the several returns thereto  
see *Exp. Off Sher.* 290 et seq.

## CHAPTER VIII.

### OF THE REMOVAL OF INDICTMENTS BY CERTIORARI.

10 & 11 Car. 1, c. 10(a), s. 4. [*Recites that bills of indictment found at assizes and sessions have been often removed by certiorari, in order to throw difficulties in the way of prosecution.*] By means whereof such offenders for the most part, escape unprosecuted and unpunished, and the king loseth the fines which ought and should have been imposed upon them, if such indictments had been prosecuted and not removed: be it therefore enacted, that all such writs of certiorari shall, from and after the end of this present parliament, be delivered at the generall assizes, or at some quarter sessions of the peace respectively in open court, and that the parties indicted shall, before the allowance of such certioraries, become bound unto such person or persons, which shall prosecute such bills of indictment against them, in the summe of ten pounds, with such sufficient sureties as the justices of assizes, at their generall assizes, or the justices of the peace at their said quarter sessions of the peace, shall think fit, with condition to pay unto the said prosecutors of such bills of indictment, within one moneth after the conviction of such parties indicted, such reasonable costs and damages as the justices of assize or justices of peace of such counties where such bills of indictment shall be found in the generall assizes or sessions of the peace respectively shall asseesse or allow; and that, in default thereof, it shall be lawfull for the said justices of assize and justices of the peace respectively to proceed to tryal of such indictments; any such writs of certiorari to remove the same indictments notwithstanding.

Writs of certiorari shall be delivered at assizes or sessions; and shall not be allowed unless the party become bound as herein.

No certiorari shall be granted in term time to remove indictments for misdemeanor from quarter sessions, except upon special order.

8 Anne, c. 5 (b), s. 1. [*Reciting that notwithstanding the 10 & 11 Car. 1, c. 10, writs of certiorari had been improperly obtained to remove indictments after issue joined at assizes and sessions, to the great discouragement of prosecutors.*] Be it &c., that in term time no writ of certiorari whatsoever, at the prosecution of any party indicted, be hereafter granted, awarded, or directed out of the said court of queen's bench, to remove any such indictment or presentment of trespass or

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(a) Entitled "*An Act to prevent and punish the abuses in procuring process and sepersedeas of the peace and good behaviour out of his majesty's courts of Chancery and King's Bench, and to prevent abuses in procuring writs of certiorari, &c.*"

(b) Entitled "*An Act to prevent delays of proceedings at the assizes or sessions.*"

misdemeanor, before tryal had, from before the said justices in the said courts of general assizes or quarter sessions of the peace, unless such certiorari shall be granted or awarded upon motion of counsel on affidavit, and by rule of court made for the granting thereof before the judge or judges of the said court of queen's bench sitting in open court; and that all the parties indicted, prosecuting such certiorari, before the allowance thereof, shall find two sufficient manucaptors, who shall enter into recognizance (a) before the justices to whom the same shall be delivered, in the sum of twenty pounds, with condition at the return of such writ to appear and plead to the said indictment or presentment in the said court of queen's bench, and at his and their own cost and charges, to cause and procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereunto, to be tried at the next assizes, to be held for the county wherein the said indictment or presentment was found, after such certiorari shall be returnable, if not in the county of Dublin and the county of the city of Dublin; and if in the said county or city, then to cause or procure it to be tried the next term after, wherein such certiorari shall be granted, or at the sitting after the said term, if the court of queen's bench shall not appoint any other time for the tryal thereof; and if any other time shall be appointed by the court, then at such other time, and to give due notice of such tryal to the prosecutor or his attorney in court (b), and that the said recognizance and recognizances, taken as aforesaid, shall be certified into the said court of queen's bench with the said certiorari and indictment, to be there filed, and the name of the prosecutor (if he be the party grieved or injured), or some publick officer, to be indorsed on the back of the said indictment (c); and if the person prosecuting such certiorari, being the defendant, shall not, before allowance thereof, procure such manucaptors to be bound in recognizance as aforesaid, the justices of the assize and of the peace may and shall proceed to tryal of the said indictment at the said sessions, notwithstanding such writ of certiorari so delivered (d).

8 Anne, c. 5.  
Security shall be given for trying the issue.

(a) The practice of requiring a recognizance does not extend to the removal of a conviction before justices, *R. v. Hipwell, Batty* 245.

(b) Notwithstanding the condition of the recognizance seems to be express, that the defendant shall appear &c., yet it shall not be forfeited, unless the prosecutor of the indictment give rules according to the course of the court, 2 *Hawk. c. 27, s. 54*; but see *R. v. Clark, 5 B. & A. 728*. And if the prosecutor at the trial refuse to pray a tales, and the cause be thus made a remanet, the defendant is not liable to costs, *R. v. Lowfield, Str.* 937.

(c) It is immaterial whether the name be on the back of the indictment, provided it be proved by affidavit, that the prosecutor is in fact a party injured or civil officer, 2 *Hawk. c. 27, s. 53*.

(d) Notwithstanding these words, justices of peace will be in contempt if they fail to make a return to a certiorari, though no proper recognizance

8 Anne, c. 5.

Defendant  
on conviction  
shall pay  
costs.

2. That if the defendant prosecuting such writ of certiorari be convicted (a) of the offence (b) for which he was indicted, that then the said court of queen's bench shall give reasonable costs (c) to the prosecutor if he be the party grieved, or be a justice of the peace, mayor, bailiff, constable, headborough, tythingman, churchwarden, or overseer of the poor, or any other civil officer, who shall prosecute upon the account of any fact committed or done, that concerned him or them as officer or officers to prosecute or present (d); which costs shall be

have been entered into, 2 *Hawk. c. 27, s. 47*. If a recognizance be taken, different from that prescribed by the act, it seems, it will not operate as a supersedeas of the proceedings below, *Id. s. 49*.

(a) This means not convicted by verdict merely, but by judgment; therefore if, after a verdict of guilty, the judgment be arrested, no costs can be taxed for the prosecutor, *R. v. Turner, 15 East. 570*. But if the defendant die between the verdict of guilty and final judgment, his bail are nevertheless liable to pay costs, *R. v. Finmore, 8 T.R. 409; R. v. Turner, 3 B. & Cr. 160*.

(b) The word "offence" here extends as well to nonfeasance as misfeasance, *R. v. Taunton St. Mary, 3 M. & S. 471*.

(c) Those costs only are to be taxed which have been incurred subsequent to the certiorari, 2 *Hawk. c. 27, s. 56; R. v. Summers, Salk. 55*. The costs of conveying the defendant from the King's Bench, after receiving sentence of imprisonment, to the gaol of his county, are reasonable costs within the statute, *R. v. Gilbie, 5 M. & S. 520, 2 Chitt. R. 159*; but not the costs of a special jury, *R. v. Lord Abingdon, 1 Esp. 229*. If the prosecutor have received one-third of the fine imposed on the defendant, the amount received shall be deducted from the costs payable to him, *R. v. Osborne, 4 Burr 2125*.

(d) The prosecutor of an indictment for an attempt to commit felony, in which no real injury is done, is not a party grieved within this statute, *R. v. Ingleton, 1 Wils. 139*; neither is the prosecutor for an obstruction to a high way entitled to his costs, unless he be a justice of the peace, *R. v. Kettleworth, 5 T.R. 33*, or constable, *R. v. Taunton St. Mary, 3 M. & S. 465*, or prove himself actually injured, as by being obliged to go a more circuitous route, *Id. ibid; R. v. Williamson, 7 T.R. 32; R. v. Incedon, 1 M. & S. 268*; and see *R. v. JJ. of Middlesex, 3 B. & Ad. 938*. A justice who prosecutes a gaoler for an escape is not entitled to costs as a public officer, *R. v. Sharpness, 2 T.R. 47*. Rated inhabitants of a parish, who were prevented by rioters from entering the vestry-room to attend a meeting called for the purpose of imposing a church rate, and who afterwards prosecuted the offenders, have been held to be parties grieved within this statute, *R. v. Thompkins, 2 B. & Ad. 287*. So also are persons dwelling near a steam engine, which emitted volumes of smoke that injured their health, clothes, and furniture, *R. v. Dewsnap, 16 East. 194*. But where the expenses of the prosecution are defrayed by subscription, the nominal prosecutors have been held not entitled to costs under this act, *R. v. Cook, 1 M. & Ry. 526*. And where the indictment for a libel on the governor of a parish workhouse, was preferred by the direction of the select vestry of the parish, and the defendant having removed it by certiorari into the King's Bench, was convicted; it was held that the libelled party was not the party grieved within the meaning of the act, *R. v. Dewhurst, 5 B. & Adol. 405*. In *R. v. Edwards, 5 B. & Adol. 407, n.* the defendant was convicted on an indictment for assaulting a watch-

taxed(a) according to the course of the said court; and that the prosecutor, for recovery of such costs, shall, within ten days after demand made of the defendant (b), and refusal of payment, on oath, have an attachment granted against him the defendant by the said court for such his contempt; and that the said recognizances shall not be discharged till the costs so taxed shall be paid (c). 8 Anne, c. 5.

3. That in any of the vacations, writs of certiorari may be granted by any of the justices of her majesty's court of queen's bench, whose names shall be indorsed on the said writ, upon affidavit of the truth of the suggestion for granting the same; which shall be filed in the said court of queen's bench, and also the name of such person at whose instance the same is granted; and that the party or parties indicted, prosecuting such certiorari, shall, before the allowance of such writ or writs of certiorari, find such sureties, in such sum, and with such conditions, as are before mentioned and specified in this present act. In vacation, certiorari's may be granted by any justice of K. B.

11 & 12 Geo. 3, c. 34. Whereas persons indicted for high

man and constable of the borough of Derby: the indictment had been removed from sessions by the defendant, and was carried on at the expense of the paving and lighting commissioners, acting under a local act; but it was held that the nominal prosecutor was not a party grieved, nor were the commissioners public officers, prosecuting as such, within the meaning of the act.

(a) By the taxing of the costs, they become a debt actually vested; and although the prosecutor should afterwards die without having made any demand of them, this only affects the remedy by attachment; but does not affect the debt, which goes to his representatives, *R. v. Chamberlayne*, 1 T. R. 103.

(b) Where the defendant died after a verdict of guilty, and before judgment, the prosecutor was held entitled to have the recognizances estreated against the bail, although no demand had been made upon the representatives, the bail not having shewn that there was any representative upon whom such demand could have been made, *R. v. Turner*, 3 B. & Cr. 160.

(c) A defendant having had his indictment removed, and having previously entered with his bail into the usual recognizance to appear and plead, give notice of trial, and go to trial, failed in the last of these conditions. The prosecutor then moved for his costs for not going to trial pursuant to notice, which being taxed and demanded, an attachment issued against the defendant, under which he was arrested. He then went to trial and was acquitted. The court, notwithstanding, refused to discharge the recognizance until the costs of not going to trial were paid, *R. v. Lyon*, 3 Burr. 1461. The amount of the costs to be taxed is not limited by the recognizance, which is only a further security for them; and the court will not discharge the recognizance entered into pursuant to the statute, until the taxed costs are paid to the prosecutor, *R. v. Teal*, 13 East. 4. His acceptance of those costs does not, as is usual in other cases, preclude him from afterwards moving to aggravate the fine that may be imposed on the defendant, 2 Hawk. c. 27, s. 53.



11 & 12 G. 3,  
c. 34.

Indictments  
for treason  
or felony  
removed into  
K. B. may be  
remitted.

treason and felony, may remove as well their bodies as their indictments into the court of King's Bench, if that court shall think fit, and cannot by order of law be remitted or sent down to the justices of gaol delivery or of the peace, or other justices or commissioners, to proceed upon them; be it therefore &c., that in every such case, the justices of the King's Bench shall have full authority and power, by their discretions, to remand and send down, as well the bodies of all such persons as their indictments, into the counties where the said high treason or felony are or shall be charged in said indictments to be committed or done, and to command all justices of gaol delivery, justices of the peace, and all other justices and commissioners of oyer and terminer, and every of them, to proceed and determine upon all the aforesaid bodies and indictments so removed, after the course of the common law, in such manner as the same justices of gaol delivery, justices of the peace, and other commissioners, or any of them, might or should have done, if the said prisoners or indictments had never been brought into the said King's Bench.

The act 11 &  
12 G. 3, c. 34,  
extended to  
cases of in-  
dictments  
removed at  
the suit of  
crown.

21 & 22 Geo. 3, c. 51. [*It recites the 11 & 12 Geo. 3, c. 34.*] And whereas the said act does not extend to cases where the body of persons indicted for high treason or felony as aforesaid, or their indictments, are removed into the court of King's Bench, at the suit of the crown; therefore be it &c., that the justices of the King's Bench shall have power and authority, by their discretions, to remand and send down, as well the bodies of all such persons as their indictments, into the counties where such high treason and felony are or shall be charged to be committed or done; and that in all cases where such indictments are removed, either by the defendant, or at the suit of the crown, to command all justices of gaol delivery, justices of the peace, and other justices, and commissioners of oyer and terminer, and every of them, to proceed and determine upon all the aforesaid bodies and indictments so removed, in such manner as the same justices of gaol delivery, justices of the peace, and other commissioners, or any of them might or should have done, if the said prisoners or indictments had never been brought into the said King's Bench.

NOTE.  
Where it lies.

A certiorari, so far as the subject of the present work is concerned, may be defined to be an original writ issuing out of the court of King's Bench, and commanding the judges or officers of inferior courts to certify or return the records of a cause depending before them, *Com. Dig. Certiorari, A. I.* The certiorari is used to bring under the consideration of the

NOTE.

rior court, the validity of indictments and presentments, the proceedings thereon ; to prevent a partial or insufficient trial ; to enable the defendant to plead a pardon ; or that process of outlawry may issue against an offender, in those cases where the process of the inferior court will not be effective.

4 *Bl. Com.* 321 ; *R. v. Bothell*, *Holt* 157. It lies to review all judicial proceedings, where a writ of error does not unless it be expressly taken away by statute, *R. v. S.*, 8 *T.R.* 544. Generally speaking, all inferior jurisdictions of record, 1 *Salk.* 144, and all those erected by act of parliament, are subject to the revision of the court of King's Bench, and their proceedings are removable there, *Cawelt v. Burwell*, 1 *Salk.* 144, *Ld. Raym.* 454, 469 ; *R. v. Inhabitants of —, in Glamorganshire*, *Ld. Raym.*

Express and special words therefore, are necessary to control this principle, *R. v. Moseley*, 2 *Burr.* 1040. A statute merely take away a certiorari, or require that it shall be applied for within a limited time, it does not extend to the crown, *R. v. —*, 2 *Ch. R.* 136 ; *R. v. James*, 1 *St.* 304, *n.* So, if an indictment contain counts framed under two statutes, by one of which a certiorari is prohibited, but by the other not, the writ is grantable, *R. v. Saunders*, 5 *Ad. & Ry.* 611, and see *R. v. Eaton*, 2 *T.R.* 89

The attorney-general appearing for the crown, or for an officer of excise, or other person whose defence he takes up in public capacity, may obtain the writ as a matter of absolute right, the king having the prerogative of selecting his tribunal, and is restrained by act of parliament, *R. v. Tindall*, 4 *Burr.* 8. Private prosecutors obtain it at any time before trial, as a matter of course, and without any special cause being laid before the court ; and the court has no jurisdiction over the proceedings consequent thereon, no matter how great the hardship. *R. v. Pasman*, 2 *Dowl. Pr. C.* 529, 1 *Ad. & Ell.* 603 ; they do not obtain it as of right, *R. v. Lewes*, 4 *Burr.* 2456 ; for if it should appear that the granting of the writ would lead to injustice, it will be refused, or if granted, may be quashed, or a *procedendo* awarded, *R. v. Wynne*, 2 *Burr.* 749 ; *R. v. Ryall*, *Batty*, 583. Defendants never obtain the writ except upon special cause sworn by affidavit, *R. v. Clace*, 4 *Burr.* 2458 ; *R. v. Eaton*, 2 *T.R.* 89 ; *R. v. Stannard*, 4 *T.R.* 161. The cause must be stated, and which the court is accustomed to yield to, may be the importance of a question of law arising on demurrer, in the mind of the judge, *R. v. Porter*, *Salk.* 149 ; *R. v. Wartnaby*, 2 *Adol. & Ell.* 435. And in such case, the questions relied on ought to be stated to the court in the affidavits, *R. v. Harrison*, 1 *Ch. R.* 571. Or it may be, that a view is necessary, which cannot be had below, without the consent of the prosecutor, *Anon.* 2 *Barnard.* 214 ; or that the defendant is of good repute, and the prosecution on slight

## NOTE.

grounds, *R. v. Wills*, *Str.* 549; or that an impartial and satisfactory trial cannot fairly be expected, as from the necessity of a special jury, *R. v. Jameson*, *Batty* 243, or the like, *R. v. Fawle*, 2 *Ld. Raym.* 1452; *R. v. Lewis*, *Str.* 704; *R. v. Holden*, 5 *B. & Adol.* 347; or that the prosecutor's attorney, being under-sheriff, attended the grand jury at the finding of the bill, *R. v. Webb*, 2 *Str.* 1068; or that the prosecutor has had recourse to vexatious and harassing delays, or has been instigated by malice, 1 *Barnard.* 41; or that the defendant has been disappointed of his trial, by reason of the absence of the judges, *R. v. Morgan*, 2 *Str.* 1040; or, being a public officer, his daily attendance is required in another county, *Anon.* 1 *Ch. R.* 571, *n*; or that the investigation already had, having been unsatisfactory, a new one cannot be had below, save for irregularity in the former proceedings, 13 *East*, 416 *n*. But it is not sufficient ground for granting the certiorari, that a prejudice exists against the defendant, unless it be in the court below, *R. v. Mathews*, 1 *Ch. R.* 571, *n*; or the offence be of such a character as that the minds of the inhabitants of the county generally will be affected, *R. v. Holden*, 5 *B. & Adol.* 347. Nor will a summary conviction be removed, because an appeal to the sessions has failed, in consequence of an informality in the recognizance, *R. v. Lopdell*, *Batty* 32. The King's Bench will not remove proceedings from the higher jurisdictions where the judges preside, as the assizes, or commission at Green-street, without strong grounds being produced as a reason for the application, *Anon.* 1 *Salk.* 144; *R. v. Knatchbull*, 1 *Salk.* 150; *Nehuff's Case*, 1 *Salk.* 151; *R. v. Pusey*, *Str.* 717. Thus difficult questions of law, arising upon special verdict, *R. v. Huggins*, 2 *Ld. Raym.* 1574, and a doubt in the mind of the judge, as to what sentence he should pronounce, have been held good grounds of removal, 2 *Hawk. c.* 27, s. 31.

When the writ should be applied for

The prosecutor, as has been said, *ante* 553, may have the writ at any time before trial. The proper time for a defendant's applying for it is before issue joined below, and sufficiently early to allow of a trial being had at the next sitting of the court in which it is sought to have it heard, *R. v. Perkins*, 1 *Ch. C. L.* 381. A certiorari, served after the jury have been sworn and before verdict, does not prevent the return of the verdict, *R. v. North*, *Salk.* 144. The practice of removing indictments between verdict and judgment is much discouraged; and is only allowed where questions of law arise, or where, from the peculiar circumstances of the case, it is thought more proper to pronounce judgment in the court above. After the legal questions have been disposed of, the King's Bench usually remits the proceedings to the court below, in all cases where the punishment is discretionary, that the sentence may be awarded by the court which is best ac-

quainted with all the circumstances, *R. v. Jackson*, 6 *T. R.* 145. A certiorari will not be granted to remove an indictment from sessions, after judgment pronounced; but the party will be left to his writ of error, *R. v. Seton (Inhab.)* 7 *T. R.* 873; *R. v. Pennegoes*, 1 *B. & Cr.* 142.

NOTE.

The writ is obtained by prosecutors, by a side-bar rule; and by defendants, upon their application to the court of King's Bench in term time, or to one of its judges in vacation, by motion founded on an affidavit of the facts. The order of court, or fiat under the hand of the single judge, 3 *Salk.* 80, having been obtained, the defendant proceeds to give bail by recognizance, pursuant to the statute, 2 *Hawk. c.* 27, s. 50, upon the perfection of which, the writ issues, having the names of the bail indorsed upon it, and without which it ought not to be allowed, *R. v. Bothell*, 1 *Salk.* 149; *R. v. Dunn*, 8 *T. R.* 217. In the former case, the writ, and in the latter, both writ and fiat must be subscribed by a judge, *R. v. White*, 1 *Salk.* 150. The affidavit to ground the motion should be entitled "in the King's Bench," but not of any cause. If so, it cannot be read upon the motion, *R. v. Nohro*, 1 *B. & Cr.* 267; or if read, and a conditional order made thereon, it will afterwards be discharged, *R. v. Ward, Batty* 71.

How obtained.

The writ should accurately describe the record it is intended to remove; thus the mistake has been held fatal, where it described the indictment to be for stealing two horses, and that certified was for stealing one only; or where an order was stated as concerning foreign salt, and that certified respected salt in general, 2 *Hawk. c.* 27, ss. 77, 78; or where it described an indictment as taken before J. P. and eight others, and that certified appeared to be taken before J. P. and seven others only, or before the eight and others beside. *Id.* 76. Where the writ mentions an indictment against two or three persons, and that returned is only against one, the proceedings will be invalid, *Anon. Str.* 116; and such a writ will only remove a record in which the parties were jointly indicted, *R. v. Brown, Ld. Raym.* 609; but if it mention an indictment against one, and that returned be against that one and others, it seems the writ will be effectual so far as concerns the one, 2 *Hawk. c.* 27, s. 80. A material variance in the names or additions will also prejudice, as if a wrong christian or surname be inserted, or a party be styled "knight and baronet" instead of "baronet" only; or "sadler" instead of "salter," or the like; but if the variance be only in spelling, and not in sound, as "Burd" for "Bird," "Shelbery" for "Shelbury," &c. it will not be material, because it appears not by any record of the court but that the name in the certiorari may be the true name, and the record certified, describing one by a name of the same sound, shall be intended to mean the same person, 2 *Hawk. c.* 27, s. 81. Also it seems that

Of the form of the writ.

**NOTE** the record will be removed by a writ which gives the party no addition whatever; but not, if the writ should give him an addition, and the record omit it, *Id. ibid.* If the writ only require the tenor of the indictment to be removed, and not the indictment itself, the writ will be quashed, *R. v. St. Mary, Devizes, Salk. 147; R. v. North, Salk. 565.* And if it only require the removal of the indictment, this will not suffice to remove the whole record after conviction; and in a certiorari issued for that purpose, it will be necessary to give the party a day in court, *R. v. Dixon, 2 Ld. Raym. 971.* Where it is intended to remove the record after verdict, the writ must be expressly framed for that purpose; for a certiorari to remove an indictment will not remove a conviction, *Id. ibid.* The writ need not describe whether the offence be laid *contra formam statuti*, *R. v. Hayes, Str. 846.*

Effect of the writ.

As soon as the writ has been produced to the judges below, when sitting in their judicial capacity, they are bound to obey it, and all further proceedings are erroneous, *R. v. Battams, 1 East. 298.* Yet if the jury have been sworn when the writ is delivered, they may proceed with the trial, *1 Salk. 144, 150;* but the writ must be delivered before it is out of return, else it is of no avail, *2 Hawk. c. 27, s. 59.* A certiorari removes all things done between the teste and return, *Cross v. Smith, 2 Ld. Raym. 836;* even an indictment found after the teste, *2 Hawk. c. 27, s. 73;* and operates as a supersedeas from the time of its service, but not from the time it issued; and therefore, if not served until after judgment on the indictment, it will be quashed, the record being then removable only by writ of error, *R. v. Seton, 7 T.R. 373.* If the sessions illegally proceed, after the due delivery of the writ, punishment by attachment for the contempt may be awarded against the justices, *1 Salk. 148;* or it seems, a criminal information will be granted, *R. v. Seton, 7 T.R. 374.* If the indictment be removed after issue joined and then remanded, the inferior court may proceed to trial as if the certiorari had never been awarded, *2 Hawk. c. 27, s. 61.* If the defendant be convicted of a capital offence, he must be removed by *habeas corpus*, that he may be present in court if he would move in arrest of judgment; but this is not necessary after a special verdict, *R. v. Spragg, 2 Burr. 930.*

Of the return to the writ.

The return should be made by the party to whom it is directed. Thus the *custos rotulorum*, although he keep the records, cannot make the return, because the writ is not directed to him, *Pic v. Thrill, Hob. 135;* neither could the clerk of the peace, unless he were mentioned in it, *Ashley's Case, 2 Salk. 479;* and because he is the most proper officer to make the return, it is the practice in Ireland to insert his name in the writ, *R. v. Macnamara, Alc. & Nap. 61.* The return ought to be under the seal of the inferior court, or of the justice or justices to whom it is directed; and if

a court have no proper seal, it seems the return may be made under any other, 2 *Hawk. c. 27, s. 65*; *R. v. Macnamara, Alc. & Nap. 61*; *R. v. Kenyon, 6 B. & Cr.*

Upon a return of a certiorari to remove an indictment, it need not appear by the caption by what authority the writ was held; but it must appear that the inferior court has jurisdiction, *R. v. Haddock, Andr. 137*. Upon a certiorari to remove from the sessions an indictment for a riot or forcible entry &c., the return must have these words, "and also hear and determine divers felonies &c."; for if the return mention only that they are justices of the peace, without such words, according to the commission, the return is insufficient, *Dalt. J. c. 195*. But this rule, it would appear, does not apply to a return to a certiorari to remove a recognizance for keeping of the peace, where it is sufficient for the justice to style himself "one of the justices of the peace for the county of S," *Id. ibid*. It appears necessary to mention in the return, the time when, and the names of the justices before whom, the sessions or assizes were held, and the names of the justices by whom the indictment was found, *R. v. Darley, 1 East 174*. The very record itself, and not a copy of it, must be returned, *Palmer v. Forsyth, 4 B. & Cr. 401*;

is it sufficient to state its tenor, *Askew v. Hayton, 1 vol. Pr. Ca. 510*. If any thing be inserted in the return, by way of explanation or otherwise, which is not commanded, will be rejected as surplusage, *R. v. Weston Rivers, 2 Salk. 3*. If it be defective, the court will allow an amendment of it, *R. v. Macnamara, Alc. & Nap. 61*. The return and recognizance (if any) should, when ready, be enclosed with the record, and sealed and sent with the certiorari to the crown office of the King's Bench, *Dalt. J. c. 195, Burn, J. Certiorari VIII*. If the party who sued it and served the writ, suffer it to lie still after the day of the return of the certiorari, yet the justices of peace ought, *officio*, to send it away, because the writ containeth in itself command to them so to do, *Dalt. J. c. 195, sed vid. Cowp. 2, Dyer 245*. The return of the writ, if neglected, may be enforced by a side-bar rule; but if that rule be improperly set out, the defendant should move to have it discharged, *R. v. Battams, 1 East 298*. If a false return be made, it will nevertheless be filed, and the party injured thereby will be left to his remedy by action or information, *Dalt. c. 195*.

If the court should discover, after the writ has issued and before its return, that it has issued improvidently, it will order it to be quashed, *R. v. Seton, 7 T. R. 373*. If that discovery be not made until after the return of the writ, and that the record has been actually removed by force of it, it will order the writ to be taken off the file, and award a *procedo*, *R. v. Clace, 4 Burr. 2459*; or a *supersedeas*, in case

NOTE.

Of quashing the writ.

**NOTE.** of the removal of a summary conviction, *R. v. Wakefield*, 1 *Burr.* 485. But if the record have not been returned by force and virtue of the writ, in judgment of law, it still remains in the court below; and if the defect or irregularity be in the writ, the court will order it to be taken off the file and quashed; but if in the return, it will be sent back to be amended, if the defect be a formal one, *R. v. Kenyon*, 4 *B. & Cr.* 640; *R. v. Macnamara*, *Alc. & Nap.* 61; or if it be substantial, as returning a copy of the indictment instead of the record itself, both the writ and return will be quashed, and a new writ ordered, 1 *Salk.* 147; *Palmer v. Forsyth*, 4 *B. & Cr.* 401; *Askew v. Hayton*, *Dowl. Pr. Ca.* 510; *Lyons v. Parcell*, 1 *Hud. & Bro.* 1; *Cogan v. Fitton*, 1 *H. & B.* 375; or the court below will be allowed to proceed and take such order for the defendant's appearance in one court or the other, as the circumstances may require, 2 *Hawk. c.* 27, s. 82. After the recognizance has been forfeited by the defendant's not procuring a trial according to its condition, the court will not hear a motion to quash the indictment or certiorari, 2 *Hawk. c.* 27, s. 55. Nor can a motion to quash the return be made, when the certiorari has been set down for argument, *R. v. Hennessy*, 2 *H. & B.* 373.

Subsequent  
proceedings.

After the writ has been returned to the crown office, the prosecutor may compel the attendance of the defendant in the court above, by suing out a *venire* to the sheriff. When served with this, he usually appears and impails to the next term; but if he neglect to appear after service, writs of *distingas*, *alias*, and *pluries*, are sued out successively against him; under which, issues from forty shillings upwards are levied. If *non est inventus* be returned, a *capias* issues; from which, if arrested, he is discharged on entering an appearance; or he may at once be arrested under a judge's warrant granted upon the return of the *venire*; and in that case, he must put in bail before he can be discharged, *Hand Pr.* 42; 2 *Hawk. c.* 27, s. 83. If the indictment have been removed by the defendant, and the prosecutor deem the bail insufficient, he may move the court to compel him to put in better bail, or that a *procedendo* shall be awarded, *Hand Pr.* 39; but the court will not increase the security on an affidavit of aggravating facts, *R. v. Salter*, 2 *Chit. R.* 190. And he may compel him to go to trial, by entering a side-bar rule to estreat the recognizance, unless he appear and plead and go to trial according to the exigency of the statute, *Hand Pr.* 40. All the subsequent process is the same as if the cause had been originally commenced in the court to which the certiorari has removed it, *Hand Pr.* 40. If the defendant be convicted, notice of motion for the judgment of the court is given both to him and his bail, *Hand Pr.* 43. After the removal of the indictment, the court can make no alteration in it, as by adding or striking out a count, *R. v. Pewtress*, 2 *Str.* 1026;

if they may make alterations in the caption, *R. v. Davies*, 4 *East* 174.

NOTE.

If the prosecutor have misconducted himself in the course of the proceedings, as by improperly suing out a certiorari, *nes v. Davies*, 1 *B. & Cr.* 143, or by withdrawing the record after having given notice of trial, and without a sufficient countermand, *R. v. Bartrum*, 8 *East* 269, the court, having acquired jurisdiction by the certiorari, will oblige him pay costs to the defendant; but the motion for that purpose must be made in bank, and not at nisi prius, *R. v. Watton*, *C. & P.* 229. So also, if after removing an indictment, should move to quash it, the court will not yield, unless pay costs, *R. v. Moore*, *Str.* 946; *R. v. Webb*, 3 *Burr.* 38. But if the certiorari have been legally and regularly issued, the court will not visit the prosecutor with costs consequent on the proceeding, *R. v. Pasman*, 2 *Dowl. Pr. Ca.* 2. And where a true bill for perjury was found, and the judge at the assizes having refused to try it on account of manifest imperfections in the record, a new bill was preferred, whereupon the defendant was found guilty, but a new trial was granted; and then the prosecutor, instead of taking up the old record again, preferred a new indictment for the same offence, and removed it by certiorari, the court used to stay the proceedings upon that indictment until the prosecutor paid the costs of the former proceedings, conceiving that the prosecutor had not acted oppressively towards the defendant, *R. v. Tremearne*, 5 *B. & Cr.* 761.

## FORMS.

William the Fourth &c., to the keepers of our peace, and our justices (a) to hear and determine divers felonies, trespasses, and other misdemeanors committed within [or to our justices assigned to hold our assizes in and for] our county of \_\_\_\_\_, and to the clerk of the peace [or crown] of the said county and every of them, greeting. We being willing, for certain reasons, that all and singular indictments of whatsoever trespasses, contempts, and misdemeanors, whereof A. . and C. D. [yeomen] are indicted before you, (as it is said) be determined before us and not elsewhere, do command you, and every of you, that you or one of you do send

(1)  
Writ of certiorari to remove an indictment from quarter sessions.

(a) The certiorari will not be effectual to remove the record, if it call the justices before whom the record is taken "our justices," and in the record certified they appear to have taken it as justices of a former king, 2 *Mut. c.* 27, s. 76. If the writ be misdirected, it will be quashed upon its return, or if not returned may be superseded, *Woodcraft v. Kinaston*, 2 *Atk.* 1. In this country, it is the practice to direct the writ to the justices of peace or assize, and also to the clerk of the peace or crown, by whom the return is made, *Alc. & Nap.* 61.



## FORMS.

under your seals, or the seal of one of you, before us, on [the morrow of all souls], wheresoever we shall then be in Ireland, all and singular the said indictments, with all things touching the same, by whatsoever name the said A. B. and C. D. are therein called, together with this our writ, that we may further cause to be done therein what, of right and according to the law and custom of Ireland, we shall see fit to be done. Witness the right honourable Charles Kendal Bushe, at Dublin, the       day of       in the       year of our reign.

*Indorsed*, "at the instance of the prosecutor" [or "defendant."]

(2)  
Return  
thereto.

*On the back of the writ, write;—*The execution of this writ appears in a certain schedule hereunto annexed.

*On a distinct piece of parchment, (for the return must be on parchment, R. v. Darlington, 1 Barnard. 113,) write;—*

County of S. } Be it remembered, that at the general  
to wit. } quarter sessions of the peace, [or at the sessions  
\_\_\_\_\_ } of oyer and terminer and general gaol delivery,  
held at       in and for [the       division of] the said county of  
S., on &c., in the       year of the reign &c., before J. P.,  
L. M. and others their fellows, justices of our said lord  
the king, assigned to keep the peace of our said lord  
the king, within the said county of S., and also to hear  
and determine divers felonies, trespasses, and other misdemeanors  
in the said county committed, [or before N. O. esq., one  
of the justices of our lord the king, before the king himself,  
assigned to deliver the gaol of our said lord the king, of the  
county of S. aforesaid, of the prisoners being therein, and also  
to inquire of all the treasons, felonies, trespasses, contempts,  
offences, injuries, and other misdeeds whatsoever, and to hear  
and determine the said felonies and other the premises in the  
said county perpetrated,] upon the oath of W. I., B. I., &c.  
[the names of the jurors by whom the bill was found,] good and  
lawful men of the county aforesaid, then and there sworn and  
charged to inquire for our said lord the king, and the body of  
the said county, it is presented in manner and form as appears  
in a certain indictment annexed to this schedule.

P. Q. clerk of the peace [or crown]  
for said county.

## CHAPTER IX.

### OF PLEADING.

**3 Edw. 1, c. 12, Eng.** It is provided also, that notorious Prisoners  
felons, and which openly be of evil name, and will not put refusing to  
themselves in enquests of felonies, that men shall charge them plead, shall  
with before the justices at the king's suit, shall have strong and have *peine*  
hard imprisonment, as they which refuse to stand to the com- *forte et dure.*  
mon law of the land. But this is not to be understood of  
such prisoners as be taken of light suspicion.

**17 & 18 Geo. 3, c. 45, s. 1.** Whereas great delay of jus-  
tice hath of late years been occasioned by returning persons,  
who stand outlawed in civil cases, on grand juries: be it &c., Outlawry of  
that from and after the twenty-ninth day of September, in a civil case,  
(1778), no plea of the outlawry of a grand juror in any civil shall not be  
case shall be received in avoidance of any act or acts to be pleaded in  
had or done by any grand jury whatsoever. avoidance of  
any act done  
by the jury.

**60 Geo. 3, & 1 Geo. 4, c. 4(a), s. 1.** Whereas great  
delays have occurred in the administration of justice, in cases  
of persons prosecuted for misdemeanors by indictment or in-  
formation in his majesty's courts of king's bench at Westmin-  
ster and Dublin, and by indictment at the sessions of the  
peace, sessions of oyer and terminer, great sessions, and ses-  
sions of gaol delivery, in that part of Great Britain called  
England, and in Ireland respectively, by reason that the  
defendants in some of the said cases have, according to the pre-  
sent practice of such respective courts, an opportunity of post-  
poning their trials to a distant period, by means of imparlances  
in the said several courts of King's Bench, and by time being  
given to try in such respective courts of session; for remedy  
thereof be it &c., that from and after the passing of this act,  
where any person shall be prosecuted in his majesty's court of  
King's Bench at Westminster, or in his majesty's court of  
King's Bench in Dublin respectively, for any misdemeanor, Persons pro-  
either by information or by indictment there found, or re- secuted in K.  
moved into the same respective courts, and shall appear in B. for misde-  
term time in either of the said courts respectively in person, meanors, not  
allowed to  
imparl, but  
must plead in  
four days.

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(a) Entitled "*An Act to prevent delay in the administration of justice in cases of misdemeanor.*"

60 G. 3, & 1  
G. 4, c. 4.

to answer to such indictment or information, such defendant, upon being charged therewith, shall not be permitted to imparle to a following term, but shall be required to plead or demur thereto within four days from the time of his or her appearance; and in default of his or her pleading or demurring within four days as aforesaid, judgment may be entered against the defendant for want of a plea; and in case such defendant shall appear to such indictment or information by his or her clerk or attorney in court, it shall not be lawful for such defendant to imparle to a following term; but a rule requiring such defendant to plead may forthwith be given, and a plea or demurrer to such indictment or information enforced, or judgment by default entered thereupon, in the same manner as might have been done before the passing of this act, in cases where the defendant had appeared to such indictment or information by his or her clerk in court or attorney in a previous term.

Court may  
allow further  
time to plead.

2. Provided always, and be it further enacted, that it shall be lawful for the said respective courts, or for any judge of the same respectively, upon sufficient cause shown for that purpose, to allow further time for such defendant to plead or demur to such indictment or information.

Persons who  
have been  
made a nen-  
able, twenty  
days before  
sessions or  
assizes, shall  
plead thereat,  
unless a cer-  
tiorari shall  
be delivered  
before the  
jury be  
sworn.

3. That from and after the passing of this act, where any person shall be prosecuted for any misdemeanor by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery, within that part of Great Britain called England, or in Ireland, having been committed to custody or held to bail to appear to answer for such offence twenty days at the least before the session at which such indictment shall be found, he or she shall plead to such indictment, and trial shall proceed thereupon at such same session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of certiorari for removing such indictment into his majesty's courts of King's Bench at Westminster or in Dublin respectively, shall be delivered at such session, before the jury shall be sworn for such trial.

Certiorari  
may be issued  
before indict-  
ment found.

4. And it is hereby declared and enacted, that such writ of certiorari may be applied for and issued before such indictment has been found, in the like cases, in the same manner, and upon the same terms and conditions, as if such writ of certiorari had been applied for after such indictment had been found.

If the party  
havenot been  
amenable for  
twenty days  
before the  
session at  
which the  
indictment is

5. That from and after the passing of this act, where any person shall be prosecuted for any misdemeanor by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery within that part of Great Britain called England, or in Ireland, not having been committed to custody or held to bail to ap-

The bills of indictment having been found, and handed in to the clerk of the crown in open court, by some of the grand jurors, the next step is the *arraignment*, or the calling the offender to the bar of the court to answer the matter charged upon him by the indictment, 2 *Hale*, 216. This can only be done when the defendant appears in person to answer the indictment. In the King's Bench therefore, upon trials of misdemeanor or mayhem, where, through the favour of the court, the defendant is allowed to appear by attorney, *Bacon's Case*, 1 *Lev.* 146; *R. v. Haddock*, *Str.* 1100, arraignment is dispensed with; but, upon trials for treason or felony, where the personal appearance of the defendant is absolutely required, 2 *Hale*, 216, arraignment appears to be indispensable; and attainders for capital crimes have been reversed for the want of it, 2 *Hale*, 217. But it is doubted whether it be necessary to state it on the record, and it seems that if it be stated on the record that he had oyer of the indictment, that imports it, *Com. Dig. Indictment, M.*; 2 *Hawk. c.* 28, s. 6. The arraignment is performed in the following manner;—the clerk of the crown desires the gaoler to put forward the prisoner, who advances to the front of the dock, where he stands without any kind of manacle or bond upon him, unless there be manifest danger of a rescue, 2 *Hale*, 219: if the prisoner be a peeress she is arraigned kneeling, 1 *Lea. C. C.* 146. The clerk of the crown then says to him, “A. B. hold up your right hand. You stand indicted for that you, on &c., at &c.” (going through all the material parts of the indictment, so as to put the prisoner in full possession of the charge against him, and concluding with the question,) “are you guilty or not?” The indictment is to be slowly read, if the defendant wish it, 2 *Lea, C. C.* 711. The practice of holding up the right hand is very usual and convenient, but by no means necessary, *R. v. Radcliffe*, 1 *Bl. Rep.* 3. It is done for the purpose of identifying the prisoner, as the person named in the record, and if he refuse to hold up his hand, the identification may be effected in any other way, 2 *Hawk. c.* 28, s. 2. The ceremony is not required in case of a peer, *Ld. Delamere's Ca.* 4 *St. Tr.* 211; *Ld. Mohun's Ca.* 4 *St. Tr.* 508. If the prisoner confess that he is guilty, the judge usually admonishes him on the effect of his conduct; as, by dispensing with a trial, he excludes all the mitigating circumstances which might appear in evidence. If the prisoner will not retract his confession, the clerk of the crown takes a note of it opposite the prisoner's name in the crown book, and causes him to be put back until it is thought right to call him up for judgment. In such cases, this is usually deferred until the judge has had leisure to read the informations and examinations, and thus to fix the punishment which he thinks

NOTE.  
Arraign-  
ment.

NOTE. due to the crime. If however, the prisoner, as is most usual, plead not guilty, and thus *puts himself* upon trial, 9 Geo. 4, c. 54, s. 7, the clerk of the crown notes it in his book by writing *po. se.* (i. e. *ponit se*) opposite his name, and proceeds to the arraignment of another prisoner, until so many are arraigned as will serve for a petit jury to pass upon at once, *Cr. C.C.* 5. If the prisoner stand mute on his arraignment, the court may direct a jury to be impannelled to try whether he stands mute by the act of God, or of malice, *R. v. Halton*, 1 R. & M. 78; *Steel's Case*, 1 Lea, C. C. 394. And if he stand mute of malice, or will not answer directly to the accusation, it amounts to a plea of not guilty, 9 Geo. 4, c. 54, s. 8, *ante* 564, *R. v. Davis*, *Gow* 219. But the defendant is by no means confined to the two pleas of guilty or not guilty. He may plead to the jurisdiction, or in abatement, or specially in bar, or demur. And this is the proper time for him to do so. As to all of which, see *Archb. Pl. & Ev.* 78. 4th Ed. Or he may plead guilty only as to part; thus, if indicted for murder, he may plead guilty of manslaughter; and if the crown officers choose to accept that plea, sentence may be passed forthwith, *R. v. McCarron*, *Mon. Sum. Ass.* 1835. When several persons are joined in one indictment, all, or as many of them as are amenable to justice, may be arraigned together; the indictment is then stated once in the presence of all, but each is separately asked whether he is guilty or not, *Kel.* 8. If there be an inquisition before the coroner of murder, and likewise an indictment for the same offence, it is usual to arraign the prisoner upon the indictment; but he may be arraigned upon both at the same time. If arraigned upon the indictment only, there ought to be an entry of *cesset processus* upon the coroner's inquest as to the prisoner, who may otherwise be outlawed upon it, 2 Hale 221. If however, the same man be indicted of several larcenies or robberies, he may be severally arraigned and tried upon each indictment, in order that the parties prosecuting may have restitution, 2 Hawk. c. 28, s. 7; 9 Geo. 4, c. 55, s. 50, *ante* 9. Accessories before the fact, as they may be indicted, so they may be arraigned before, or with, or after their principal, 9 Geo. 4, c. 54, s. 23, *ante* 360; but accessories after the fact, although they may be arraigned before, cannot be tried except with, or after the conviction of their principal, 2 Hale 222. If the prisoner be deaf and dumb, care should be taken to convey to him the meaning of the arraignment by signs, *Jones's Case*, 1 Lea. C. C. 452; but if he be incapable of thus receiving intelligence, or if, from obstinacy or other reason, he refuses to answer directly to the charge, the court may, and always does, cause a plea of not guilty to be entered for him, and the trial to be proceeded with, 9 Geo. 4, c. 54, s. 8, *ante* 564. The strong and hard confinement, or *peine forte et dure*, which

formerly the punishment of those charged with felony who contumaciously silent, and the cruelty of which Lord Coke, 2 *Inst.* 178, details with horrible minuteness, has fallen into desuetude since the passing of the 13 & 14 *Geo.* 3, c. 16; which, a refusal to plead was made tantamount to conviction; but that statute has since been repealed by the 9 *Geo.* 4, c. 1. In prosecutions for treason, as the defendant cannot be tried immediately after arraignment, he is remanded by the court to be brought up again at some fixed period to take his plea. 4 *Harg. St. Tr.* 778.

NOTE.

## CHAPTER X.

### OF THE JURY.

On trial of indictments, a juror may be challenged for being a prosecutor.

Consanguinity beyond fifth degree no principal cause of challenge to a juror.

Jury to be summoned six days before the assizes.

The panel of cities and towns shall be returned by the sheriffs, that the jury may be struck from them.

25 *Edw. 3, c. 3, Eng.* Item, It is accorded, that no indictor shall be put in inquests upon deliverance of the indictors of felonies or trespass, if he be challenged for that same cause by him which is so indicted.

33 *Hen. 8, c. 4.* That from henceforth, consanguinitie or affinitie, being not within the fifth degree betwixt the juror empanelled, or at any time hereafter to be empanelled in any enquest or triall, whatsoever it bee, or his wife, or any of the parties to the same enquest or trial, or any the wife of the same parties, or betwixt the sheriffe or sheriffes, under-sheriffes, coroner or coroners, or other officer or officers, that shall serve, returne, or array any panell or jury in any enquest or triall, or the wife of any of them, and any of the parties to the same enquest or triall, or any the wife of any of the same parties, shall be no principall challenge.


17 & 18 *Geo. 3, c. 45 (a), s. 3.* [*That the courts of King's Bench, Common Pleas, and Exchequer, upon motion of either party, plaintiff or defendant, in any action or suit (except indictments, informations for misdemeanor, or in the nature of quo warranto), may direct juries to be struck for the trial of the issues, in the same manner as special juries have been struck upon trials at bar.*]

4. That the said jury so struck as aforesaid shall be the jury returned for the trial of said issue, and shall be summoned by the sheriff or other officer appointed to return the same, at least six days before the assizes or sittings, at which such issue is to be tried.

6. That where any special jury shall be ordered by rule of any of the said courts to be struck by the proper officer of such court in the manner aforesaid, in any cause arising in any city, or county of a city or town, the sheriff or sheriffs of such city, or county of a city or town, shall be ordered by such rule to bring, or cause to be brought before the said officer

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(a) Entitled "*An Act for the amendment of the law with respect to out-lawries, returning special juries, and the future effects of bankrupts in certain cases.*" So much of this act as in any wise relates to special juries for trials in counties at large has been repealed by the 3 & 4 *Will. 4, c. 91 s. 50.*

Books or lists of persons qualified to serve on juries within 17 & 18 G. 3, same, out of which juries ought to be returned by such c. 45.  iff or sheriffs, in like manner as the grand panel hath been ally ordered to be brought, in order to the striking of juries trial at bar in causes arising in counties at large; and in y such case, the jury shall be taken and struck out of such & or list respectively.

Geo. 4, c. 51 (a), s. 1.—Whereas it is expedient that the relating to juries in Ireland should be assimilated to the in force in Great Britain, in the particulars hereinafter tioned. Be it therefore &c., that from and after the ing of this act, it shall and may be lawful to and for his Esty's courts of King's Bench, Common Pleas and Ex- quer, in Dublin respectively, upon motion made on behalf is majesty, his heirs or successors, or on motion made on alf of any prosecutor or defendant, in any indictment or in r information for any misdemeanor, or in any information in nature of a quo warranto, depending or to be brought or ecuted in the said court of King's Bench (b), or in y information depending or to be brought or prosecuted the said court of Exchequer, to order and appoint juries to struck before the proper officer of each respective court, r the trial of the issue joined in any of the said cases (and able by a jury of twelve men), in such manner as special ries have been and are usually struck in such courts respec- ely upon trials at bar, to be had in the same courts, and in h manner as special juries have been and may be struck in er cases, under an act made in the parliament of Ireland 17 & 18 Geo. 3. c. 45] or under any other act or acts, or y law, usage, or custom in force in Ireland, relating to special ies; any thing in the said recited act of the [17 & 18 Geo. 3] the contrary in any wise notwithstanding.

Special juries may be struck on trials of indictments &c., as in other cases.

3 Geo. 4, c. 54, s. 9.—That in all inquests to be taken ore any of the courts in Ireland, wherein the king is a ty, howsoever it be, notwithstanding it be alleged by them t sue for the king, that the jurors of those inquests, or ne of them, be not indifferent for the king, yet such inquests ll not remain untaken for that cause; but if they that sue the king will challenge any of those jurors, they shall ign of their challenge a cause certain; and the truth of the ne challenge shall be enquired of, according to the custom

The king shall only challenge for cause;

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a) Entitled, "*An Act for the amendment of the laws with respect to rial juries, and to trials in counties of cities and towns, and towns cor- te in Ireland.*" By the 3 & 4 Will 4, c. 91, s. 50, so much of this act as tes to special juries, in any indictments or informations tried in any nty at large in Ireland, has been repealed.

b) This may be granted as well in indictments originating in the King's ch as in those removed thither by certiorari, *R. v. Jameton*, Batty 243.



9 G. 4, c. 54.

† &amp;c.

but the court  
may order  
jurors to  
stand by.

There shall be  
no peremp-  
tory chal-  
lenge beyond  
twenty.

of the court; and it shall be proceeded† to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the court. Provided always, that nothing herein contained shall affect, or be construed to affect the power of any court in Ireland to order any juror to stand by until the pannel shall be gone through, at the prayer of them that prosecute for the king, as has been heretofore accustomed; and that no person arraigned for treason or murder, or for other felony, shall be admitted to any peremptory challenge above the number of twenty; and if any person so arraigned for treason or murder, or for other felony, shall peremptorily challenge more than twenty, such excessive challenge shall be rejected, and the jurors so challenged beyond the number of twenty shall be sworn on the inquest, and the trial shall proceed as if such excessive challenge had not been made or taken.

Sheriffs not  
to return any  
persons as  
jurors, who  
are not quali-  
fied according  
to this act.

Age and qua-  
lification of  
jurors.

3 & 4 Will. 4, c. 91(a). Whereas the laws relative to the qualifications and summoning of jurors and the formation of juries in Ireland are numerous and complicated; and it is expedient to consolidate and simplify the same, and to alter the mode of striking special juries, and in some respects to amend the said laws; be it &c., that the sheriff of any county, county of a city, or county of a town in Ireland shall not, in answer to any writ of venire facias or precept for the return of jurors, return the names of any persons not qualified to serve on juries according to the provisions of this act; and that every man, except as herein-after excepted, between the ages of twenty-one years and sixty years, residing in any county in Ireland, who shall have, in his own name or in trust for him, within the same county, ten pounds by the year above reprises in lands or tenements, or in rents issuing out of any lands or tenements, or in lands, tenements, and rents taken together, in fee simple, fee tail, or for the life of himself or some other person or persons, or who shall have within the same county fifteen pounds by the year above reprises in lands or tenements held by lease or leases originally made for an absolute term of not less than twenty-one years, whether the same shall or shall not be determinable on any life or lives, and also every resident merchant, freeman, and householder having a house and tenements in any city, town, or borough, situate within the said county, of the clear yearly value of twenty pounds, such city, town, or borough not being a county in itself, shall be qualified with respect to property, and shall be liable to serve on juries for the trial of all issues joined in any of the king's courts of record in Dublin, and in all courts of assize, nisi prius, oyer and terminer, and gaol delivery, such issues

(a) Entitled "An act for consolidating and amending the laws relative to jurors and juries in Ireland."

g respectively triable in the county in which every man 3 & 4 W.4, c.  
 alified respectively shall reside, and shall also be qualified 91.  
 respect to property, and liable to serve on grand juries in  
 ts of sessions of the peace, and on petty juries for the trial  
 l issues joined in such courts of session of the peace, and  
 le in the county in which every man so qualified respec-  
 y shall reside; and that every man, except as hereinafter  
 oted, being between the aforesaid ages, residing in any  
 ey of a city or county of a town in Ireland, and being  
 a qualified as aforesaid, and also every resident merchant,  
 an, and householder having lands or tenements or perso-  
 state of the value of one hundred pounds, shall be qualified  
 repect to property, and shall be liable to serve as a juror  
 he trial of all issues joined in any of his majesty's courts  
 Cord at Dublin, and in all courts of assize, nisi prius, oyer  
 terminer, and general † delivery, such issues being re- † Sic.  
 ively tried in the said city or town in which every man  
 alified shall respectively serve.

Provided always, and be it further enacted, that all Exemptions  
 s; all judges of the king's courts of record in Dublin; all from serving  
 gymen in holy orders; all persons who shall teach or on juries.  
 uch in any religious congregation; all serjeants and barris-  
 at law actually practising; all assistant barristers; all  
 ges of ecclesiastical courts; all advocates in ecclesiastical  
 rts or in courts of the civil law, actually practising; all  
 rnies, solicitors, and proctors duly admitted in any court  
 aw or equity, or of ecclesiastical or admiralty jurisdiction,  
 which attornies, solicitors, and proctors have usually been  
 nitted, actually practising and having duly taken out their  
 ual certificates; all officers of any such courts, or of any  
 rt of criminal jurisdiction, actually exercising the duties  
 heir respective offices; all public notaries duly admitted;  
 coroners, gaolers, and keepers of houses of correction; all  
 nbers and licentiates of the king and queen's college of  
 sicians in Ireland actually practising, and all other physi-  
 is actually practising; all surgeons, being members of one  
 he Royal College of Surgeons in London, Edinburgh, or  
 blin, and actually practising; all apothecaries certificated  
 he court of examiners of the governor and company of the  
 thecaries hall of the city of Dublin, and actually practis-  
 ; all officers in his majesty's navy or army on full pay; all  
 ers of customs and excise; all sheriffs' officers, police con-  
 les(a), and parish clerks; all postmasters general and  
 r deputies, and all other persons employed and acting in

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) By the 6 & 7 Will. 4, c. 13, s. 23, this exemption is extended to the  
 pector general, deputy inspectors, receivers, paymasters, county in-pec-  
 sub-inspectors, chief or other constables or sub-constables" of police.

3 & 4 W. 4, c.  
91.

the service of his majesty's post office; all treasurers, secretaries of grand juries, shall be and are hereby absolutely freed and exempted from being returned, and from serving upon any juries or inquests whatsoever, and shall not be inserted in the lists to be prepared by virtue of this act as herein-after mentioned: provided also, that all persons exempt from serving upon juries in any of the courts aforesaid, by virtue of any prescription, charter, grant, or writ, shall continue to have and enjoy such exemption, in as ample a manner as before the passing of this act, and shall not be inserted in the lists herein-after mentioned.

Aliens disqualified, except on juries de medietate; convicts or outlaws, &c., disqualified.

3. Provided also, and be it enacted and declared, that no man, not being a natural-born subject of the king, is or shall be qualified to serve on juries or inquests, except only in cases herein-after expressly provided for; and no man who hath been or shall be attainted of any treason or felony, or convicted of any crime that is infamous, unless he shall obtain a free pardon, nor any man who is under outlawry by virtue of any criminal process, or under excommunication, is or shall be qualified to serve on juries or inquests in any court or on any occasion whatsoever.

Form of venire facias and of precept for jurors, at gaol deliveries and sessions of the peace.

10. That every writ of venire facias juratores, for the trial in any county, county of a city, or county of a town, of any issue whatsoever, whether civil or criminal, or on any penal statute, in any of the courts herein-before mentioned, shall direct the sheriff of such county, city, or town to return twelve good and lawful men of the body of his county, qualified according to law, and the rest of the writ shall proceed in the accustomed form; and that every precept to be issued for the return of jurors before courts of oyer and terminer, gaol delivery, and sessions of the peace in Ireland, shall in like manner direct the sheriff to return a competent number of good and lawful men of the body of his county, qualified according to law, and shall not require the same to be returned from any particular venue within the county; any law, custom, or usage to the contrary notwithstanding.

Juries to be returned from jurors book, by sheriff, and by coroners and elisors.

11. That the sheriff shall not, in answer to any writ of venire facias, or precept for the return of jurors, return the names of any persons not contained in the jurors book for the then current year; and that where process for returning a jury for the trial of any of the issues aforesaid shall be directed to any coroner, elisor, or other minister, he shall have free access to the jurors book for the current year, and shall not return the names of any persons not contained in the said book: provided always, that if there shall be no jurors book in existence for the current year, it shall be lawful to return jurors from the jurors book for the year preceding; and that if it shall happen that any person not in the jurors book shall be returned, and any trial shall proceed, and verdict be found,

objection to any such person as a juror, such trial  
deemed a mis-trial, nor shall the verdict thereon  
be questioned on account of the return of such  
panel, provided that nothing herein contained shall be con-  
sidered to prevent any sheriff or other returning officer, in  
obedience to any writ of venire or precept, from exer-  
cising discretion in framing the panel annexed to such  
writ in such manner as he is now by law directed to do,  
so far as to prevent the insertion in such panel of  
names not contained in the said jurors book.

3 & 4 W. 4. c.  
91.

Provided always, and be it further declared and en-  
acted, that nothing herein contained shall be construed to pre-  
judice the jurisdiction of King's Bench, or any court of oyer and  
 terminer, or court of sessions of the peace, from  
having and exercising the same power and autho-  
rity as they may now have and exercise, in issuing any writ  
or in making any award or order, orally or other-  
wise, for the return of a jury for the trial of any issue before  
such courts respectively, or for the amending or enlarg-  
ing of panels returned for the trial of any such issue :  
Provided that to every such writ, precept, award, or order,  
proceedings thereon, shall be made in the manner  
now used and accustomed in such courts respectively ;  
except that the jurors shall be returned from the body  
of the county, and not from any particular venue within the  
county, and shall be qualified according to this act.

Not to alter  
the powers of  
courts to  
make orders  
for returning  
juries as here-  
tofore.

And where in any case, either civil or criminal, or  
under any statute depending in any of the said courts of  
Dublin, it shall appear to any of the respective  
judges thereof in vacation, that it will be pro-  
cessary that the jurors or some of the jurors who  
are to view the issue in such case should have the view of the  
land in question, in order to their better understanding the  
issue, that the judge may cause to be given upon the trial of such issues, in every  
such court, or any judge thereof in vacation, may  
cause to be drawn up containing the usual terms, and  
if such court or judge shall so think fit, the  
judge may order for the view to deposit in the hands of the  
sheriff a sum of money to be named in the rule, for  
the expences of the view, and commanding special  
writs of venire facias, distringas, or habeas corpora to issue, by  
the sheriff or other minister to whom the said writs  
are directed shall be commanded to have six or more of  
jurors named in such writs, or in the panels thereunto  
annexed who shall be mutually consented to by the parties,  
or if they cannot agree, shall be nominated by the proper offi-  
cers of the respective courts of King's Bench, Common Pleas,  
or at Dublin, for the causes in their respective  
respective places in question, some convenient time before

Where jurors  
are to view  
lands, &c.  
the court may  
order special  
writs of ve-  
nire facias,  
distringas, or  
habeas cor-  
pora.

3 & 4 W. 4, c. 91. the trial, who then and there shall have the place in question shown to them by two persons in the said writs named, to be appointed by the court or judge; and the said sheriff or other minister who is to execute any such writ shall, by a special return upon the same, certify that the view hath been had according to the command of the same, and shall specify the names of the viewers.

Viewers, in case of appearance, to be sworn upon the jury first.

17. That where a view shall be allowed in any case, those men who shall have had the view, or such of them as shall appear upon the jury to try the issue, and shall not be challenged off, shall be first sworn; and so many only shall be added to the viewers who shall appear, as shall, after all defaulters and challenges allowed, make up a full jury of twelve.

Jurors to be summoned six days before day of attendance.

18. That the summons of every man to serve on any jury, common or special, in any of the courts aforesaid, shall be made by the proper officer six days at least before the day on which the juror is to attend, by shewing to the man to be summoned, or in case he shall be absent from the usual place of his abode, by leaving with some person there inhabiting, a note, in writing under the hand of the sheriff, sub-sheriff, or other proper officer, containing the substance of such summons.

Want of qualification in common jurors to be cause of challenge.

20. That if any man shall be returned as a juror for the trial of any issue in any of the courts herein-before mentioned, who shall not be qualified according to this act, the want of such qualification shall be good cause of challenge, and he shall be discharged upon such challenge, if the court shall be satisfied of the fact; and that if any man returned as a juror for the trial of any such issue shall be qualified in other respects according to this act, the want of freehold shall not be accepted as good cause of challenge, either by the crown or by the party, nor as a cause for discharging the man so returned upon his own application, any law, custom, or usage to the contrary notwithstanding; provided that nothing herein contained shall extend in anywise to any special juror.

Not to extend to special jurors.

Court to have the power of ordering special juries to be struck before the proper officer.

23. And be it further enacted and declared, that it is and shall be lawful for his majesty's courts of King's Bench, Common Pleas, and Exchequer in Ireland respectively, upon motion made on behalf of the king, or upon the motion of any prosecutor, relator, plaintiff, or demandant, or of any defendant or tenant, in any case whatsoever, whether civil or criminal, or on any penal statute, excepting only indictments for treason or felony depending in any of the said courts, and the said courts and judges respectively are hereby authorized in any of the cases before mentioned to order and appoint a special jury to be struck before the proper officer of each respective court for the trial of any issue joined in any of the said cases and triable by a jury, in such manner as herein-after

the striking of special juries; and every jury so 3 & 4 W. 4, c.  
l be the jury returned for the trial of such issue. 91.

t the sheriff of every county, city, and town respec-  
his under sheriff, shall, within ten days from the  
the jurors book for the current year to either of  
from such book the names of all such persons as  
peers, and of all baronets, knights, magistrates, <sup>What per-  
sons shall be  
qualified and  
liable to serve  
on special  
juries.</sup>

ons who have served or been returned to serve the  
riff or grand juror at the assizes, and of all bankers  
ale merchants who do not exercise retail trades,  
rades† who are possessed of personal property of the † *Sic.*

ve thousand pounds, and of the eldest sons of such  
pectively, and if such descriptions of persons shall  
umerous as to furnish a competent number of per-  
whom a special jury may be formed, as herein-after  
hen a sufficient number of other persons whose  
contained in the jurors book, consideration being  
rank and property of such persons, and shall re-  
cause the same to be fairly and truly copied out in  
l order, together with the respective places of abode  
ns of such men in a separate list, to be subjoined  
ors book, which list shall be called "the special

and shall prefix to every name in such list its pro- <sup>A list thereof  
to be made,  
and a num-  
ber to be pre-  
fixed to each  
name.</sup>

, beginning the numbers from the first name, and  
them in a regular arithmetical series down to the

and shall cause the said several numbers to be <sup>Numbers to  
be written  
on separate  
cards and put  
into a box.</sup>  
on distinct pieces of parchment or card, being all,  
s may be, of equal size, and, after all the said num-  
ave been so written, shall put the same together in

lrawer or box, and shall there safely keep the same,  
for the purpose herein-after mentioned.

t whenever any of the courts or judges above men- <sup>Officer of  
court to ap-  
point the  
time and  
place for  
nominating  
special jury.</sup>  
order a special jury to be struck before the proper  
ich court(a), such officer shall appoint a time and  
e nomination of such special jury; and a copy of  
court and of such officer's appointment shall be

he sheriff or under sheriff of the county, city, or  
ich the trial is to be had, and also on all the parties  
sually been served with the same respectively in the

manner; and the said officer, at the time and <sup>Under she-  
riff, or his  
agent, to at-  
tend officer  
with the spe-  
cial jurors  
list.</sup>  
ted, being attended by such sheriff or under she-  
agent, who are hereby respectively required to  
them the jurors book and such special jurors list,  
es thereof signed by such sheriff or under sheriff,

numbers so written on distinct pieces of parch-  
d as aforesaid, shall, in the presence of all the par-

S & 4 W. 4, c.  
91.

Officer to put  
all the num-  
bers into a  
box, and to  
draw out  
forty-eight,  
and to check  
them with  
the numbers  
and names  
in the list ;

and to deliver  
a list of the  
forty-eight  
names to  
each party,  
to be reduc-  
ed as hereto-  
fore.

Costs of  
special jury.

ties in any of the cases aforesaid, and of their attorneys, if they respectively choose to attend, or if the said parties or their attorneys, all or any of them, do not attend, then in their absence, put all the said numbers into a box, to be by him provided for that purpose, and after having shaken them together shall draw out of the said box forty-eight of the said numbers, one after another, and shall, as each number drawn, refer to the corresponding number in the special jury list, and read aloud the name designated by such number, and if, at the time of so reading any name, either party or attorney shall object that the man whose name shall have been so referred to is in any manner incapacitated from sitting on the said jury, and shall also then and there prove the same to the satisfaction of the said officer, such name shall be set aside, and the said officer shall instead thereof draw out of the said box another number, and shall in like manner refer to the corresponding number in the said list, and read aloud the name designated thereby, which name may be in like manner set aside, and other numbers and names shall in such case be resorted to, according to the mode of proceeding herein-before described for the purpose of supplying the places of those set aside, until the whole number of forty-eight names not liable to be set aside shall be completed ; if in any case it shall so happen that the whole number of forty-eight names cannot be obtained from the special jury list, then and in that case the said officer shall fairly and impartially take, according to the mode of nomination heretofore pursued in nominating special juries, such a number of names from the general jurors list as shall be required to make a full number of forty-eight names, all and every of which forty-eight names shall in such case be equally deemed and taken to be those of special jurors ; and the said officer shall after that make out for each party a list of the forty-eight names, in the order in which they shall have been drawn as aforesaid, together with their respective places of abode and addition, and after having made out such list shall return all the numbers drawn out, together with all the numbers remaining undrawn, to such sheriff or under sheriff, or his agent, to be by him or under sheriff safely and securely kept for future use, and all the subsequent proceedings for reducing the said forty-eight, and all other matters whatsoever relating to special juries, shall remain and continue in force as heretofore, except where the same or any part thereof is expressly altered by this act ; and all the fees heretofore legally payable for the striking of special juries shall continue to be paid in the same manner.

27. That the person or party who shall apply for a special jury shall pay the fees for striking such jury, and all the expenses occasioned by the trial of the cause by the said jury shall not have any further or other allowance for the

taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury unless the judge before whom the cause is tried shall immediately after the trial certify under his hand upon the face of the record that the same was a cause proper to be tried by a special jury.

3 & 4 W.4, c.  
91.

That where a full jury shall not appear before any court of assize or nisi prius in any criminal prosecution prosecutable in such court, or in any suit or action, or where, by reason of the non-appearance of a full jury, by challenge of any of the jurors, the jury is likely to remain untaken for default of appearance, in every such court, upon request made for the king by any one thereto authorized or assigned by the court in cases of criminal prosecutions as aforesaid, or on request made by the parties, plaintiff or demandant, defendant or tenant, or their respective attornies, in any action or suit, whether civil or private, shall command the sheriff, or other minister of the law, from the making of the return shall belong, to name and appoint, as often as need shall require, twelve other able men of the county, city, or town, then present; and the sheriff or other minister aforesaid shall, at such command of the court, name twelve such men duly qualified, who shall be present or be found to serve on such jury, and shall add and annex their names to the former panel; provided that where a special jury have been struck for the trial of any issue, the talesmen shall be such as shall be impannelled upon the common jury to serve at the same court, if a sufficient number of talesmen can be found; and the names of the persons so to be named, with their additions and places of abode, shall be written on several distinct pieces of parchment or cards, being as near as may be of equal size, and shall be delivered to the clerk of the judge before whom such issue is to be tried by the sheriff or other officer to whom the returning of such jury shall belong, and shall, by the direction and care of such officer, be rolled up all as near as may be in the same manner, put together in a box or drawer and shaken together, and delivered to an indifferent person, by direction of the court, in open court, shall draw out such pieces of parchment or card one by one, until a number shall appear which shall be sufficient, with those of the original panel who appear, to make up the number of twelve, who shall be the jury to try the said issue; and the king, by any one so authorized or assigned as aforesaid, and all and every the parties aforesaid, shall and may in each of the cases aforesaid respectively have their respective challenges to the jurors so added and annexed; and the court shall proceed to the trial of every such issue, by those jurors who were before impannelled, together with talesmen so newly added and annexed, as if all the said talesmen had been returned upon the writ or precept awarded to the issue.

Tales de circumstantibus.

† Sic.

† Sic.



3 & 4 W. 4, c.  
91.

31. [*Recites 6 Geo. 4, c. 51, s. 2, ante 521.*] That so much of the said act of the 6th year of the reign of King George the Fourth as is hereinbefore specified shall apply and extend to and include any indictment found by any term grand jury of the county of Dublin or of the county of the city of Dublin, in his majesty's court of King's Bench in Ireland, in like manner, to all intents and purposes, as in the case of an indictment removed into the said court by writ of certiorari.

Fine on  
jurors making  
default.

32. That if any man, having been duly summoned to attend on any kind of jury in any of the courts in this act mentioned, shall not attend in pursuance of such summons, or being thrice called shall not answer to his name, or if any such man, or any talesman, after having been called, shall be present but not appear, or after his appearance shall wilfully withdraw himself from the presence of the court, the court shall set such fine upon every such man or talesman so making default (unless some reasonable excuse shall be proved by oath or affidavit), as the court shall think meet: provided always, that where any viewer, having been duly summoned to attend on any jury, shall make default as aforesaid, the court is hereby authorized and required to set upon such viewer (unless some reasonable excuse shall be proved as aforesaid) a fine to the amount of ten pounds at the least, and as much more as the court, under the circumstances of the particular case, shall think proper.

Sheriff in-  
demnified in  
returning any  
person whose  
name is in  
the list; and  
if he returns  
one not in the  
list, or if the  
clerk of assize  
records ap-  
pearance  
when the  
party did not  
appear, he  
shall be fined.

33. That every sheriff and other minister to whom the return of juries shall belong shall be and is hereby indemnified for impannelling and returning any man named in the jurors book, although he may not be qualified or liable to serve on juries; and that if any sheriff or other such minister shall wilfully impanel and return any man to serve on any jury before any of the courts hereinbefore mentioned, (except on the grand jury at any assizes or sessions,) such man's name not being inserted in the jurors book for the current year, or if such book has not been delivered, then in the jurors book last delivered, or if any prothonotary, judge's clerk, clerk of the peace, town clerk, or other officer of any of the courts in this act mentioned, shall wilfully record the appearance of any man so summoned and returned who did not really appear, in every such case the court shall, upon examination in a summary way, set such fine upon such sheriff, minister, prothonotary, judge's clerk, clerk of the peace, or other officer offending, as the court shall think meet.

No money to  
be taken to  
excuse per-  
sons from  
serving.

34. That no sheriff, under-sheriff, coroner, elisor, bailiff, or other officer or person whatsoever, shall directly or indirectly take or receive any money or other reward, or promise of money or reward, or any consideration whatsoever, or the promise of any consideration, to excuse any man from serving or from being summoned to serve on juries, or under any such colour or pretence; and that no bailiff or other officer appointed by any sheriff, under-sheriff, coroner, or elisor, to

summon juries, shall summons any man to serve thereon, other than those whose names are specified in a warrant or mandate signed by such sheriff, under sheriff, coroner, or elisor, and directed to such bailiff or other officer; and if any sheriff, under-sheriff, coroner, elisor, bailiff, or other officer shall wilfully transgress in any of the cases aforesaid, or shall neglect to summon any juror, or shall summon any juror less than four days before the day on which he is to attend, except in the cases hereinbefore excepted, the court of assize, nisi prius, oyer and terminer, gaol delivery, or court of sessions of the peace within whose jurisdiction the offence shall have been committed, may and is hereby required, on examination and proof of such offence, in a summary way to set such a fine upon every person so offending as the court shall think meet, according to the nature of the offence.

3 & 4 W. 4, c. 91.

None to be summoned but those named in the warrant.

37. Provided always, and it is hereby further enacted, that nothing herein contained shall extend or be construed to extend to deprive any alien, indicted or impeached of any felony or misdemeanor, of the right of being tried by a jury de medietate linguæ, but that, on the prayer of every alien so indicted or impeached, the sheriff or other proper minister shall, by command of the court, return for one half of the jury a competent number of aliens, if so many there be in the town or place where the trial is had, and if not, then so many aliens as shall be found in the same town or place, if any; and that no such alien juror shall be liable to be challenged for want of freehold or of any other qualification required by this act, but every such alien may be challenged for any other cause, in like manner as if he were qualified by this act.

Juries de medietate linguæ.

38. That no justice of the peace shall be summoned or impannelled as a juror to serve at any sessions of the peace for the jurisdiction of which he is a justice.

Justices not to be summoned as jurors.

39. That no man shall be impannelled or returned to serve on any jury for the trial of any capital offence in any county, city, or town, who shall not be qualified to serve as a juror in civil causes within the same county, city, or town; and the same matter and cause being alleged by way of challenge, and so found, shall be admitted and taken as a principal challenge, and the person so challenged shall and may be examined on oath of the truth of the said matter; provided that if it shall happen that any such person, not qualified as last aforesaid, shall have been impannelled on any such jury, and shall be sworn to try the issue in such case as last aforesaid, without any challenge having been taken in due time for the cause aforesaid, no objection shall ever afterwards be admitted or taken for the want of such qualification.

Persons disqualified to serve in civil causes, not to be returned to serve in capital cases; but if sworn, not afterwards to be objected to

47. That from and after the passing of this act, it shall not be lawful, either for the king or any one on his behalf, or for any party or parties in any case whatsoever, to commence or prosecute any writ of attaint against any jury or jurors for the

Writs of attaint &c., against juries abolished.

3 & 4 W. 4.  
c. 91.

verdict by them given, or against the party or parties who shall have judgment upon such verdict; and that no inquest shall be taken to inquire of the concealments of other inquests, but that all such attaints and inquests shall henceforth cease, become void, and utterly abolished; any law, statute, or usage to the contrary notwithstanding.

NOTE.  
Of the petit  
jury.

Having already treated of the coroner's jury, *ante* 406, and the grand jury, *ante* 528; the remaining and most important consideration is the petit jury, whose province it is to pronounce absolutely upon the guilt or innocence of the party charged. It is called *petit*, because, as the two other juries must consist of twelve, and may consist of twenty-three, this one never ought to be more or less than twelve, *Bac. Abr. Juries A.* If there be less, the verdict will be ineffectual, and the judgment will be reversed for error, 2 *Hale* 161; but if more than twelve be accidentally sworn, it seems that it will not vitiate the proceedings, though it is an irregularity to be avoided, 1 *Ch. C. L.* 505. In such case, it appears that the swearing of the last is void, and the other twelve only compose the jury, 2 *Hale* 296.

The petit jury is of three kinds—1. The common jury; 2. The special jury; and 3. The jury *de medietate lingue*.

Of the quali-  
fications, and  
mode of  
summoning  
jurors.

The qualification as to age and property of jurors, is pointed out by the first section of the jury act, 3 & 4 *Will.* 4, c. 91, *ante* 570. The persons declared to be exempt from serving on juries at all, are enumerated in the second section, to which we may add the officers and constables of police under the 6 & 7 *Will.* 4, c. 13, s. 23. The disqualifications of jurors are detailed in the third section, *ante* 572.

Immediately after the circuits have been struck, (*see ante* 381,) precepts are prepared by the clerks of the crown of the several counties; and these having the signatures of the judges of the circuit attached to them, are issued to the several sheriffs fifteen days at the least before the day fixed for holding the assizes in the county. By this precept, he is commanded to cause the assizes to be summoned, and to return a competent number of qualified persons to serve as jurors, *Imp. Off. Sher.* 266; 3 & 4 *Will.* 4, c. 91, s. 10, *ante* 572. Upon receipt of this precept, the sheriff makes out from the jurors book of that year (or if there be no jurors book for that year, then from the book of the year preceding), a list of the persons intended to be summoned. These he gives to his bailiffs, together with a warrant in writing, reciting the precept, and authorizing and requiring them to cause the several persons named in the lists to be duly summoned, *Imp. Off. Sher.* 268;

*Will. 4, c. 91, ss. 11 and 34, ante 572 & 578.* This is giving to each, or leaving at his residence, six days at before the day of opening the commission, a summons, one of the high sheriff, requiring his attendance at the court on a certain day and hour therein named, 1 *Ch. 1*; 3 & 4 *Will. 4, c. 91, s. 18.* The sheriff need not actually sign the summons, *R. v. Steventon, 2*; but see 3 & 4 *Will. 4, c. 91, s. 18, ante 574.*

NOTE.

At sessions, the practice is analogous; the general precept summoning the juries being then signed by two justices, and delivered to the sheriff by the clerk of the peace, fifteen days before the day of holding the sessions.

At the opening of the commission at assizes, or of the business at sessions, the precept is delivered into the hands of the sheriff, having the return indorsed; viz.—“The

Of the precept and panel.

of the within precept appears in a certain panel annexed. So answers A. B. sheriff.” To the precept is annexed the *panel*, which is a list of the jurors returned, with their additions and places of abode, 3 & 4 *Will. 4, c. 91, s. 12*, fairly written on parchment, and bearing the following heading:—

of S. } The names of the jurors to try between  
wit. } our sovereign lord the king and the pri-  
——— } soners at the bar.”

The persons named on the panel so returned should, in case of challenges, non-attendance, or other cause, being insufficient, the judge may, by virtue of his commission of gaol delivery, award a new panel *ore tenus*, without any further process, returnable *instantly* (*a*). It is the usual course to pray a tales, *Fost. 64*; 2 *Hawk. c. 41, s. 4.* At the opening of the commission it cannot be done; but under that of *certiorari*, it possibly may, *Id. ibid.* Upon special commission the return of the process is as speedy as before justices of gaol delivery, *Id. ibid.* In practice the usual course is, after the prisoners have been arraigned, to ask them whether they will answer in their challenges. The panel is then called over; and thus ascertained how many will answer. If the number is likely to prove insufficient, the court may order the names of qualified persons present in court to be added to the panel; but this cannot be done, if the panel have been signed by the sheriff; and for this reason, the sheriff ought not to sign the panel until ordered so to do by the court, *R. v.*

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It would seem that the jurors must be summoned six days before the trial, or they cannot be punished for default, 3 & 4 *Will. 4, c. 91, s. 32.*

**NOTE.** *Hanly (a)*. Or, if the prisoners will not join in their challenges, they may be put on trial separately, or by two's or three's &c., as the court thinks proper, *Salisbury's Case*, *Plowd.* 100, *Kel.* 9. The power which justices of gaol delivery have of awarding a panel *ore tenus*, returnable *instante*, is also exercised by the King's Bench, upon the trial of indictments before them, which have been actually found by grand juries of the county or city of Dublin, *Lord Sanchar's Case*, 9 Co. 111. And the same law is, if the offence be committed in the county or city of Dublin, and the indictment be taken before justices of the same county, and removed into the King's Bench by certiorari, and the prisoner be there arraigned and pleads, 2 *Hale* 260. But in all other cases there, and in all cases before the justices of peace at sessions, or justices of oyer and terminer merely, a writ of *venire*, or particular precept, must be awarded to the sheriff, 2 *Hawk. c.* 41, ss. 1, 3. In the King's Bench, upon the trial of all indictments removed there by certiorari, the venire ought to be in the name of the king, under the seal of the court, and tested by the chief justice. It ought also to bear date, after the issue joined between the king and prisoner, and should have fifteen days between the teste and return, 2 *Hale* 260; 2 *Hawk. c.* 41, ss. 2, 3. In courts of oyer and terminer a venire may be awarded, returnable the same day on which the party is arraigned, 2 *Hawk. c.* 41, s. 4; but see *ante* 581 n. But before justices of the peace, it seems this can only be done in cases of felony, or where the party consents, *Id. ibid.* If several persons are indicted together for one crime, the court may in its discretion issue either one or several venires, *Id. s.* 8. In trials at the bar of the court of King's Bench in Ireland, the venire is always made returnable on a day certain, viz. the day appointed for the trial to take place, *R. v. Keon*, 1 *Fox & Sm.* 57; *R. v. Barrett, Co. & Alc.* 112. And in such cases, it is of no consequence whether the day of the return be in or out of term; for, by the 1 & 2 *Will.* 4, c. 31, s. 3, the day appointed by the court for a trial at bar, becomes, for all the purposes of the trial, a day in term, *R. v. Barrett*. In cases of indictments removed into the King's Bench by certiorari, and not tried at the bar of the court, but sent down to their proper counties to be tried at nisi prius, pursuant

A prisoner has a right to have the panel signed, before being put to his challenges; but it may be previously enlarged.

(a) *R. v. Hanly, Trim Lent Ass.* 1833.—There were four prisoners in this case, who refused to join in their challenges. Two of them therefore, were put upon trial. The panel contained only thirty-eight names. The prisoners' counsel applied to the court that it might be signed. *BUSHE C. J.* said that the prisoner had a right to have it signed, before he was put to his challenge; and called on the crown counsel to shew why it should not be signed. It was then moved, for the crown, that it might first be enlarged; which was directed, and having been done forthwith, was signed.

o the stat. of *Westm. II. c. 30, Bac. Abr. Juries B. 5*, the course is pretty nearly the same as in civil actions.

NOTE

Special juries in criminal cases are only grantable in cases of misdemeanor depending in the King's Bench. A special jury may be obtained on the motion of either party; but the costs will fall upon the party applying, unless the judge at the trial certify upon the back of the record that it was a cause proper to be tried by a special jury, *3 & 4 Will. 4, c. 91, s. 27, s. 576*; but see *R. v. Lord Abingdon, 1 Esp. 229*.

Special juries.

In cases of felony and misdemeanor, the defendant, if he be a foreigner, may insist upon half the jury being aliens, if so many there be in the town or place where the trial is had. If an alien neglect to claim this advantage before the jury are sworn, he can take no exception in any subsequent stage of the proceedings; but if he then allege the fact, he may challenge the array for that cause, and thereupon a new precept or venire shall issue, or an award be made of a jury *de medietate lingue*: it is however, more proper for him to surmise it upon his plea pleaded, and thereupon to pray it, *2 Hale 271; R. v. Deon, 1 Bl. 517*. It is not necessary that any of the grand jury who have found the bill should be aliens. Neither need the aliens on the petit jury be all or any of them of the country to which the defendant belongs, *Bac. Abr. Juries E. 8*.

Of juries *de medietate lingue*.

The process having been directed to the sheriff, must be executed and returned by the same officer, *Bac. Abr. Juries 3*. He must show that he has complied with its requisitions, and cannot return, *mandavi ballivo*, the writ containing a *non mittas* clause, and being in the name and behalf of his majesty, *2 Hale 264; 1 Ch. C. L. 515*. If the sheriff be a party, or, on account of relationship to the prosecutor or defendant, may be deemed unindifferent, it is then directed to the coroners, or to so many of them as are considered free from bias, for in ministerial acts the coroners must join, though in judicial ones they may divide. If there be two sheriffs, and one of them deemed to be interested, the writ is directed to the other, and not to the coroners; if the under-sheriff be supposed to be interested, it is then directed to the high sheriff, and contains an injunction that the under-sheriff shall not interfere in its execution. If an impartial coroner cannot be found, the last resource is to direct it to two persons to be named by the court called *elisors*, and to whom no objection will be allowed, *Co. Litt. 158; 1 Ch. C. L. 514; Bac. Abr. Juries B. 3*. If objections exist to the sheriff or coroner, it is usual for the prosecutor to suggest them to the court before the issuing of the process, in order that proceedings may not afterwards be delayed, *R. v. Edmonds, 4 B. & A. 480; Bac. Abr. Juries B. 3*. After a challenge to the array being allowed for the partiality of the sheriff, the coroners may return the very same jury, *Id. ibid; R. v. Dolby, 2 B. & Cr. 110*. When process is once awarded to the coroners, for the

By whom the process shall be executed.

**NOTE.** sheriff's actual partiality, the entry is *vicecomes se non intro-mittat*; and in such case, process shall not afterwards be awarded to any new sheriff; but where it was awarded to the coroners, for that the sheriff is tenant &c., it may be awarded to a new sheriff, *Bac. Abr. Juries B. 3.*

Of putting the prisoners to the bar, and calling the jury.

The prisoner having been arraigned, and the time of his trial arrived, the clerk of the crown at the assizes, or the clerk of the peace at sessions, desires him to be put to the bar. He is then placed at the front of the bar, without manacle of any kind, and if the trial is likely to be tedious, he may be accommodated with a seat, 1 *Ch. C. L.* 531. He is entitled to the use of pen, ink, and paper, during the trial, 4 *Harg. St. Tr.* 464. In serious capital cases, and where it is likely that the prisoner will avail himself of his right of peremptory challenge, it is the custom to bring forward only so many as are joined in the same indictment; and if these are numerous, and will not join in their challenges, they are generally brought forward singly; else the panel might prove insufficient, when all challenged separately; the juror who was withdrawn as to one, being withdrawn as to all, *Salisbury's Case, Plowd.* 100. But in more trivial cases, where the right of peremptory challenge does not exist, as many, of those previously arraigned, are put forward, as are thought sufficient for one jury to pass on. Proclamation is then made by the crier for a petit jury, as follows: "Hear ye, good-men and true, that are impanelled to try the issues joined between our sovereign lord the king and the prisoners at the bar, answer to your names as ye shall be called." The clerk of the crown then addresses those in the dock, "Prisoners, look to your challenges; you may challenge [twenty peremptorily and] as many [more] as you shall show cause for. If any you do challenge, you must challenge them as they come to the book to be sworn, and before they are sworn." This is the time for challenging the array, if thought prudent; that not being done, the clerk of the crown proceeds to call each juror according to his order in the panel, and if he answer and be not challenged, he is sworn.

Of challenges.

By the term *challenge*, is meant an exception to jurors who are returned to pass upon a trial, 1 *Ch. C. L.* 533. Challenges are of two kinds—to the array, and to the polls. Challenges to the polls may either be *peremptory*, or *for cause*. Challenges to the array are always *for cause*. The causes of challenge are either *principal*, or *for favour*. A principal cause is one which if found to exist, bears with it such a manifest presumption either of partiality or default in the officer making the return, or of unindifference or unfitness in the individual returned as a juror, that the question at issue must be decided in favour of the challenging party. In case of a challenge for favour, although the cause be found to exist, yet the whole question of fitness rests in the discretion of the triers, *Co. Lit.* 156; *Bac. Abr. Juries E. 1.* In the former case, all that the triers have to inquire into is the fact of the

existence of the cause assigned; that being the issue sent to them. In the latter, the issue is much more general, viz. (in case of a challenge to the array) whether it is or not impartial, *R. v. Adams, Maryborough Sp. Com.* 1832; and (in case of a challenge to the polls,) whether the juryman challenged stands indifferent between the parties, *Anon.* 1 *Salk.* 152.

NOTE.

A challenge to the array is an exception to the whole panel or array of jurors, on account of some original defect in making the return to the venire or precept, 1 *Ch. C. L.* 533. It may be made either on the part of the crown or the defendant, *Co. Litt.* 156 *a.* Every circumstance which would have formed a good reason for directing the process to the coroners or elisors, will also form a principal cause of challenge to the array of the sheriff's panel. Thus; if the sheriff be the actual prosecutor or party injured; or be related to either party at the time of making his return; or have any pecuniary interest in the event; or be the counsel or attorney of either party; or be sued by either party in an action of debt; or if an action of assault be pending between him and either of the parties; or if he have returned any individual at the request of either party; or any one whom he believes to be more favourable to one side than the other; or if the panel have been arrayed by any other than the proper officer: any of these causes being proved, the array must be quashed, *Bac. Abr. Juries, E.* 1; *Burn J. Jurors, VIII.*; *Co. Litt.* 156 *a.*; *R. v. Adams, Maryborough Sp. Com.* 1832; but it is no ground of undifferency in the sheriff, that his officer has neglected to summon one of the special jurymen returned on the panel, *R. v. Edmonds, 4 B. & A.* 471. It seems questionable whether a challenge does not lie to the array of a special jury on account of interest in the sheriff, *Nowlan v. The King, 1 Hud. & Bro.* 164.

Challenge to the array.

In challenges to the favour, the law does not presume partiality from the cause assigned, but leaves it to the triers to infer it from all the facts proved before them. If a relationship exist, not between the sheriff and one of the parties, but between their children; if the sheriff have an action of debt depending against either party; or if either party be his tenant or fellow-servant, or be united with him in the same office; or if the return have been made by the sheriff after his discharge; all these are good grounds for challenging the array for favour, *Bac. Abr. Juries, E.* 1. There can be no challenge to the array, when it has been made by the officer of the court, or by elisors, *Co. Litt.* 158 *a.*, or the clerk of the crown, whose duty it is to strike special juries in criminal cases, *R. v. Edmonds, 4 B. & A.* 471. Matters which are properly the ground of a challenge to the array should be so taken advantage of. They cannot form grounds for afterwards arresting the judgment, *R. v. Sheppard. 1 Lea, C.C.* 101.

The question of a challenge to the array having been dis-



NOTE.  
Challenge to  
the polls.

posed of, it still remains open to either party to put in their challenges to the *polls*, or to each individual returned on the panel; but after a challenge to the polls, the array cannot be challenged, *Bac. Abr. Juries, E. 1.*

On peremp-  
tory cha-  
lenges.

A peremptory challenge is an exception to a person's serving as juror, without any cause assigned. It can be made only by the prisoner, and is confined to cases of treason and capital felonies, *R. v. Phelan; R. v. Whelan (a)*. The number of such peremptory challenges is in all cases limited to twenty, *9 Geo. 4, c. 54, s. 9, ante 570.*

Challenges to  
the poll for  
cause.

Challenges to the poll may also be for cause; and that, either *principal*, or *to the favour*. Challenges for cause are not limited to any particular offences, nor to any number of persons. The *principal* causes of challenge are said to be, 1. *Propter honoris respectum*, as when a peer is returned for the trial of a commoner; 2. *Propter defectum*, as when the party returned is an alien (except on juries *de medietate lingue*), an infant, disqualified in respect of property, or exempt by reason of office or old age; 3. *Propter affectum*, where a partiality is alleged to exist in the jurymen objected to; 4. *Propter delictum*, as where the person is convict of treason, felony, or an infamous crime, or an outlaw under criminal process, *1 Ch. C. L. 540*. All these causes, save the third, will be found sufficiently elucidated in the *3 & 4 Will. 4, c. 91, ss. 1, 2, 3, & 20*. As to that, relationship to either party within the ninth degree, though it is only by a marriage, is a good principal cause of

A right to  
challenge  
peremptorily  
does not exist  
on trials for  
transportable  
felonies.

(a) *Rex v. Phelan, Maryborough Lent Ass. 1832.*—The prisoner was indicted under the *9 Geo. 4, c. 55, s. 6*, for a transportable felony, viz. with menaces demanding a pistol with intent to steal. Counsel on his behalf insisted on a right to challenge twenty peremptorily, under the *9 Geo. 4, c. 54, s. 9*, which was resisted by Serjeant *Pennfather* for the crown. SMITH B. having heard counsel on both sides, requested the assistance of BUSHE C. J. who was sitting in the civil court. The arguments having been restated, both the learned judges were of opinion that the prisoner had not the right he claimed.

*Rex v. Whelan.*—This case came before BUSHE C. J. on the following day, when a similar right was insisted on, on behalf of the prisoner. The indictment was for manslaughter. The learned judge declared his opinion that the prisoner was not entitled to challenge peremptorily; and that with a view to the right of peremptory challenge, the distinction was not between felonies and misdemeanors, but between felonies capital and not capital. Manslaughter till lately was a felony within the benefit of clergy; and when that was prayed, the punishment was formerly burning in the hand, and forfeiture of goods. However, the punishment might have been capital, if such benefit of clergy were not prayed and allowed. But by the *9 Geo. 4, c. 54, s. 12*, benefit of clergy was abolished, and (*s. 13*) no felonies could be punished with death except those which had been previously excluded from clergy. Now, manslaughter was not one of these, and in fact, by the *3 Geo. 4, c. 38*, it was made at most a transportable offence, and has been so continued by the *10 Geo. 4, c. 34, s. 12*.

challenge, *Finch L.* 401; 1 *Ch. C. L.* 541. So also, if he have been godfather to a child of the prosecutor or defendant; or have been in his employment; or have eaten or drunk at his expense; or be his counsel, attorney, or tenant; or have taken money to give his verdict; or have found an indictment against the defendant for the same cause; or have expressed his wishes as to the result. Any of these are supposed to indicate necessarily such a bias in the juror as to unfit him for the discharge of his duty between the parties, and are therefore principal causes of challenge, *Bac. Abr. Juries, E.* 5; 2 *Hawk. c.* 43, s. 27, 28; *R. v. Edmonds, 4 B. & A.* 471. But though the partiality be not thus manifestly to be presumed, yet still there may be reason to suspect it, as if the juror's son have married the daughter of the prosecutor or defendant, or if he have been chosen as an arbitrator by either party, whether he have acted or not; if he have declared his opinion beforehand; if he have laid a wager on the result; if he have lately entertained one of the parties at his house; or if either party has exhorted him as to the nature of his verdict; or if he is the fellow servant of either party. All these, and the hundred other causes which are calculated to warp a juror's mind, unconsciously perhaps to himself, are grounds for challenge to the favour, *Bac. Abr. Juries, E.* 5; 1 *Ch. C. L.* 544; *Co. Litt.* 157.

NOTE.

It is no cause of challenge that a juror has found another guilty on the same indictment, *Id. ibid.*; *R. v. Dunne(a)*; nor that either party has labored a juror to appear; but it might have been a challenge to the favour, if he had stated his case to him, *Bac. Abr. Juries, E.* 5. No challenges can be made on collateral issues, *Ibid.*; *R. v. Radcliffe, 1 Bl.* 6.

In all capital cases, before the prisoner is put to his challenges he may, by leave of the court, have the whole panel called over once in his hearing, that he may take notice who do and do not appear, in order the better to enable him to take his peremptory challenges, *Townly's Case, Fost.* 7; 2 *Hawk. c.* 43, s. 4.

How and when challenges shall be made.

There can be no challenge made, either to the array or to the polls, until a full jury have appeared, *R. v. Edmonds. 4 B. & A.* 471; *Bac. Abr. Juries, E.* 11; 2 *Hawk. c.* 43, s. 1.

(a) *Rez v. Dunne, Maryborough Sp. Com.* 1832 — The prisoner, with two others, was capitally indicted for stealing in a dwelling house. They had refused to join in their challenges, when one of them was put upon his trial and convicted. Upon the trial of another, a challenge was taken to a juror for cause, that he had been a juror upon the previous conviction. The attorney-general demurred. The court (BUSHE C. J. and SMITH B.) allowed the demurrer, saying that the juror had pronounced no opinion whatever upon the prisoner's case, and that a verdict given upon belief of the testimony of one witness could not affect a case which might be supported by the testimony of another.

Two prisoners having been indicted together, but tried separately; it is no good cause of challenge to a juror on the second trial, that he was a juror on the former.

NOTE. the book, *Walker's Case*, 1 *Lea. C. C.* 498; and other variations have been allowed on several occasions, 1 *Ch. C. L.* 552; but the practice has met with some discountenance, and in one capital case has been resisted, *R. v. M'Carron(s)*, and see *R. v. Channers*, *Moo. C. C.* 374. The words of the acts, 3 & 4 *Will. 4*, cc. 49 & 82, as to Quakers, Moravians, and Separatists, seems large enough to comprise the cases of jurors as well as witnesses; and since the passing of those acts, it would seem that persons of such religious persuasions, may now serve as jurors upon taking their affirmations, *Dunn's Case*, *Moo. C. C.* 424.

When twelve jurors have been sworn, the clerk of the crown directs the crier to "count these," [*countez*,] who accordingly does so, as they are called over by the clerk of the crown, and at the conclusion, says, "twelve good men and true, stand together and hear the evidence." The jurymen not sworn are then desired to leave the box, 1 *Ch. C. L.* 552. The prisoner is immediately given in charge; after which it becomes the solemn duty of the jurors to pay strict attention to the proceedings, and for the foreman, and such of the others as may be capable, to take notes of the evidence, to aid their recollection while deliberating on their verdict. No question should be asked of any witness by a juror, until the examination and cross-examination of that witness have closed. The jury, it is said, may give a verdict without testimony, when they themselves have a conusance of the fact, *Tr. per Pais*, 279. But if any juror have a particular knowledge of the matter, beyond what ordinary well-informed men usually have, he ought to acquaint the court, that he may be sworn as a witness, and thus let the evidence go to his fellow jurors under the sanction of an oath, *Anon.* 1 *Salk.* 405; *R. v. Parkins*, *Holt.* 404, 7 *Mod.* 2; *R. v. Rosser*, 7 *C. & P.* 648; 6 *How. St. Tr.* 1012, n. The jury are properly only judges of matters of fact. If matters of law are involved in their verdict, as is the case more or less in all general verdicts of not guilty, it becomes their duty to hearken to the law as laid down by the bench. If they do so, and their verdict be erroneous on that account, they are blameless. Otherwise they act at their peril. If the jury, against law or evidence, find a verdict for the defendant, there seems to be no remedy pro-

A Seceder who refuses to kiss the book, rejected as a juror in a capital case.

(a) *Rex v. M'Carron*, *Monaghan Sum. Ass.* 1832. Murder. On swearing the jury, one of them being a Seceder, refused to kiss the book. *Sir T. Staples* and *Hall*, for the crown, insisted that he might be sworn with uplifted hand; and cited a case at *Carrickfergus*, where the same had been done at the last assizes there, upon a trial for misdemeanor; but

BUSHE, C. J. said that *M'Clelland, B.* had uniformly refused to allow jurors to be so sworn; and feeling great doubts himself, he declined establishing the precedent.

most, the party may be bound to his good behavior in court, 2 *Hawk. c. 47, s. 11*. But if the defendant is properly convicted, the course is for the judge to grant a pardon, in order that a pardon may be applied for, *see* 6 *T. R. 625, arg.*; *R. v. Oxford*, 13 *East* 1.

NOTE.

After the evidence having been closed on both sides, and the defendant has been charged by the judge at the assizes, or the assistant barrister or other chairman of the sessions, the charge paper is handed up, and the jury proceed to deliver their verdict. If the evidence be long, or the jury be not unanimous at the moment, they retire to their room, to which no one is admitted but themselves; and when sworn to guard the door, *Burn, J. Jurors, X*. If the jury have retired, they may desire to ask some question of the court or of one of the witnesses, and it shall be granted them, provided it be done in open court, 2 *Hale*, 296. If the jury are in deliberation, they shall be kept without fire, or fire, and shall receive no communication from any person, save by permission of the court. If a juror misconduct himself, by leaving the juryroom before the verdict has been delivered, or if he have tossed up, or drawn lots for the verdict, or received refreshments without leave of the court, it is a misdemeanor, and he may be severely fined, *Hale Str. 642*; *Duke of Richmond v. Wise*, 1 *Ventr. 139*; *v. Harder*, 3 *Keb. 805*, 2 *Lev. 205*; *R. v. Lord*, 2 *Lev. 139*. The jury may give a special verdict in a capital case, 2 *Hale*, 301. But it is said, that it is not lawful for the court to suffer a special verdict in a capital case, *Kel. 29*. In a capital case, a juror cannot be withdrawn, though the parties consent to it; but in all other cases a juror may be withdrawn, if both parties consent, or not otherwise, *R. v. Perkins*, *Holt. 403*, *Carth. 27*. In *Finloch's Case*, *Fost. 27*, it has since been held that, in a capital case, the jury may be discharged before verdict, with the prisoner's consent. It would appear from the facts of the case, that whenever the jury cannot agree, or the parties do not consent, the judge may, of his own authority, discharge them after a reasonable time. The tradition is, in such a case, they are to be kept together until the judge leaves the place, and then drawn after him to the county gaol, and there discharged, seems to rest on no authority other than a dictum in *R. v. Ledgingham*, 1 *Ventr. 139*. It is said, "in cases of life and member, if the jury cannot agree before the judges depart, they are to be carried to the county gaol, so they may give their verdict out of the county," *see* 2 *Hale*, 297, 3 *C. & P. 429, n*. If a juror dies during the trial, the remaining eleven may be discharged, and the prisoner, and a new jury sworn, and the whole case be gone through, *de novo*. The new jury may consist of the eleven former jurors with one added; but all

Of the retiring of the jury.

Illness of a juror.

## NOTE.

must be re-sworn, and the prisoner must be called upon to challenge as at first, *Scalbert's Case*, 2 *Lea. C. C.* 706; *R. v. Edwards*, *Russ & Ry. C. C. R.* 224, 2 *Lea. C. C.* 621; *R. v. Stevenson*, 2 *Lea. C. C.* 546.

Of deliberating on the verdict.

Should the jury, upon carefully scanning the evidence, entertain a doubt of the prisoner's guilt, he ought to have the benefit of that doubt, upon the well-established and humane principle of the law, that it is better that ten guilty should escape, than one innocent person suffer. In applying this principle, the eloquent address of Lord Chief Justice *Bush*, delivered at a special commission in *Sligo*, in *December*, 1806, while then filling the office of solicitor general, ought to be carefully kept in mind; "If you entertain a doubt," says he, "of the prisoner's guilt you will acquit him. But you will remember that such a doubt as warrants an acquittal, must not be light or capricious, such as timidity or passion prompts, and weakness or corruption readily adopts. It must be such a doubt as, upon a calm view of the whole evidence, a rational understanding will suggest to an honest heart, the conscientious hesitation of a mind, not influenced by party, pre-occupied by prejudice, or subdued by fear."

When the jury have agreed to their verdict, they return into court, and the foreman hands to the clerk of the crown the *issue paper*, upon which he has previously entered the verdict. From this paper the clerk of the crown calls out the names of the jurors(a), and all having answered,

A juror's name rightly entered on the panel, and he rightly called to be sworn; an error in making out the issue paper, and in calling the juror to return the verdict, held immaterial.

(a) *Rez v. Grogan*, *Philipstown Lent Ass.* 1830. Murder. A person named *William Chamberlain* was called by that name from the panel, and sworn upon the jury. When the verdict was brought in, the names of the jurors were called over; but a mistake having occurred in the transcribing those names in the issue paper, *William Chamberlain* was called by the name of *Edward*. He did not answer; nor was there any notice taken of the circumstance until after the verdict of conviction had been delivered. The mistake was then discovered. *BUSHE*, C. J.,—having ascertained by inquiry in court, that the juror's name was properly entered on the panel, that he had been sworn by his proper name, and that there was no other person of the name of *Chamberlain* on the panel—said that the case would have been very different, had the juror been called and sworn by a wrong name; as, in that case, the prisoner might have been prejudiced in his right of challenge, but in this case he had sustained no such prejudice. He added, however, that he would confer with Lord *PLUNKETT*, C. J., (his brother on circuit,) and that if he saw reason to think that there was any difficulty in the case, he would reserve it for the twelve judges. After conference, both judges were of opinion that there was nothing in the objection. The juror's name was correctly entered on the panel. He was called by that name, and sworn by it. The panel is the document from which the jurors names are to be taken, in making up the record. The issue paper is a document used only for the convenience of the clerk of the crown. It is not a necessary form, nor is it any part of the proceedings which compose the record, or from which

asks, "gentlemen have you agreed to your verdict?" to which the foreman replies in the affirmative. The clerk of the crown then says, "how say you, in No. [31], are A. B., C. D., and E. F., or either and which of them, guilty of the felony] given you in charge?" The foreman answers according to the fact, which is immediately noted by the clerk of the crown in his book. In all cases of treason and felony, the verdict must be delivered in open court, 2 *Hale*, 300. In case of misdemeanor, it may be received by any of the judges, if the court have risen; after which the jury, remaining still in the custody of the bailiff, may eat and drink at their own expense. On the morrow, in open court, they are either to affirm or vary the verdict so given, which variation may be made at any time before it is actually recorded, *Co. Litt.* 227, *b.* Even though it be recorded, yet, if it appear promptly that it is not according to the intention of the jury, it may be vacated and set right, *R. v. Parken*, *Moo. C. C. R.* 45. In misdemeanor cases also, the verdict may be delivered, by consent, at the residence of the judge, even though it be out of the limits of the county, *R. v. Woodfall*, 5 *Burr.* 2667.

NOTE.

King, at the } Court of oyer and terminer, and gene-  
recution of } ral gaol delivery, in and for the county  
of S. and C.D. } of S.

FORMS.

And hereupon the said C. D. challenges the array of the panel,\* because he saith that the said panel was arrayed by the J. Z. knt., now and at the time of making the array the said sheriff of the said county of S., which said sheriff is the kinsman of the said A. B. the prosecutor in this cause, the son of G. Z., son of J. Z., son of W. Lord Z., brother of W. Lord R., father of E., mother of the aforesaid J. Z.,† and this he is ready to verify. Wherefore he prayeth judgment, and that the said panel may be quashed. Which panel, by R. F. and G. H. triers, to this chosen and returned, is found true. And therefore let the panel aforesaid be quashed and removed, &c.(a)

(1)  
Challenge to  
the array, the  
sheriff being  
a kin to the  
prosecutor.

Commencement as in last form to \*] Because he says the panel was arrayed by one J. S., esquire, late sheriff of the county of S., at the nomination of the said A. B., and in favour, [conclude as in last form from †](b).

(2)  
Challenge  
because the  
panel was  
returned at  
the nomina-  
tion of a  
party.

word is made up. The jury deliver their verdict *ore tenus*, and not upon the issue paper, though it be written therein; and it is from the communication, that the clerk of the crown enters it upon the crown

See *Tr. per Pais.* 160; *Cr. C. C.* 122.

See *Cr. C. C.* 123, *Burn, J. Jurors*; and also *R. v. Adams*, *Marybo. Sp. Com.* 1832.

## FORMS.

(3)  
Trier's oath. You shall well and truly try whether A. F. [*the juror challenged*], stand indifferent between the parties to the issue. So help you God.

(4)  
Trier's oath. You shall well and truly try the issue joined upon this challenge. So help you God(s).

(5)  
Juror's oath. You shall well and truly try, and true deliverance make, between our sovereign lord the king, and the several prisoners [and traversers] whom you shall have in charge, and true verdicts give, according to the evidence. So help you God.

(6)  
Jury bailiff's oath. You shall keep this jury from all manner of easement, meat, drink, or fire; candlelight only excepted. You shall not suffer any one to speak to them, nor shall you speak to them yourself, without leave of the court. So help you God.

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(a) The oath given in form (3), is that laid down in *4 Inst. 136*. It is manifestly only suited to one particular species of challenge, viz. a challenge to the poll for favour, as the case in question was. The present form therefore, is submitted, as applicable to all cases.

## CHAPTER XI.

### OF EVIDENCE.

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#### SECTION 1.

#### *Documentary Evidence.*

2. c. 2(a), s. 1. Forasmuch as, by the careless and keeping of the rolles, recordes, and ancient muniments that did remaine in the thresorie of this realm, and in pointed for the safe custodie of them, the same cordes, and munimentes, are some torn and rent, easeled and consealed, and some so impaired with of stone walles, as they cannot bee read, to the ill of disherison of the subjects; and although num- of old and ancient time caused the exemplification to forth of them for their better assurance, yet the not so much benefite them, as they ment they should, of no such sufficiencie in the law as the originall is; remedie herein, enacted &c., that from henceforth all annert<sup>†</sup> exemplifications to be made of any recorde, fine, processe, inrolment, office, letters, patentes, act, statute, provision, or ordinance, or of other thing whatsoever of recorde, and being sealed under r's majesties, her heires and successors, great seal of r, and under the seals of her majestie's courts, her d successores, of high bench or chiefe place, common l exchequer in this realm, and subscribed by the lord ur, both the chiefe justices, and chiefe baron for the g, shall be of the same force, effect, strength, and n law, in all things, and to all intents, constructions, oses, and shall have the same allowance, estimation, d faith, in all courts and places, and before all judges, and ministers of justice, as the originall or originalls lified, of what nature or kind soever the same bee, ought to have, if the same were produced, exhibited, alleged, and shewed forth.

Exemplifi-  
cations of re-  
cords under  
the great seal  
and seals of  
the courts,  
subscribed by  
the chancellor  
and chief  
judges, of  
same effect as  
the original.

+ *Sic.*

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led " *An act that exemplifications shall be of the same effect and as the record or matter exemplified should be.*"



41 G. 3, c. 90.

A copy of the ante-union statutes of Great Britain and Ireland respectively, printed by the king's printer, shall be received in evidence.

41 Geo. 3, c. 90(a), s. 9. And for the better and more effectual proof of the statute law of the kingdoms of Great Britain and Ireland, and of England and Ireland, previous to the union of the said kingdoms, in all courts of civil and criminal jurisdiction in every part of the said united kingdom; be it enacted, that the copy of the statutes of the kingdom of England, and of the kingdom of Great Britain, since the union with Scotland, printed and published by the printer duly authorized to print and publish the same by his majesty, or by any of his royal predecessors, shall be received as conclusive evidence of the several statutes made and enacted prior to the union of the kingdoms of Great Britain and Ireland, by the parliaments of England and Great Britain respectively, in all suits, actions, or prosecutions respectively commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any court of civil or criminal jurisdiction, in that part of the united kingdom called Ireland: and in like manner the copy of the statutes of the kingdom of Ireland, made and enacted by the parliament of the same, prior to the union of the kingdoms of Great Britain and Ireland, and printed and published by the printer, duly authorized by his majesty, or any of his royal predecessors, to print and publish the same, shall be received as conclusive evidence of the several statutes made and enacted by the parliament of Ireland, prior to the union of the kingdoms of Great Britain and Ireland, in all suits, actions, or prosecutions respectively, commenced, instituted; or carried on, or to be commenced, instituted, or carried on, in any court of civil or criminal jurisdiction, in that part of the united kingdom, called Great Britain.

Informations of persons murdered or secreted shall be admitted as evidence.

50 Geo. 3, c. 102(b), s. 5. And whereas it has happened that persons who have given information against persons accused of crimes in Ireland, have been murdered before trial of persons accused, in order to prevent their giving evidence, and to effect the acquittal of the accused; be it declared and enacted, that if any person who hath given or shall give information or examination upon oath against any person or persons for any offence against the laws, hath been or shall, before the trial or trials of the person or persons respectively against whom such information or examination hath been or shall be given, be murdered or violently put to death, or so

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(a) Entitled "*An act for the more speedy and effectual recovery of debts due to his majesty, his heirs and successors, in right of the crown of the united kingdom of Great Britain and Ireland, and for the better administration of justice within the same.*"

(a) Entitled "*An act for the more effectually preventing the administering and taking of unlawful oaths in Ireland; and for the protection of magistrates and witnesses in criminal cases.*"

forcibly carried away and secreted, as not to be able to give evidence on the trial of the person or persons against whom information or examination was given, the information or examination of such person so taken on oath shall be admissible in all courts of justice in Ireland, as evidence on the trial of the person or persons respectively, against whom information or examination was given: provided that the information or examination of a witness shall not be evidence, unless it shall be found, on a special issue to be put to the jury trying the prisoner, that the information so secreted was secreted by the person then on trial, or some person or persons acting for him or her, or in his or her favour(a).

50 G. 3, c. 102.

*Campbell, Armagh Sum. Ass. 1803.* The prisoner was indicted for the murder of Captain *Boyd* in a duel. Counsel for the prosecution sought to give in evidence certain declarations made by the deceased prisoner before his decease; but, as it did not distinctly appear that he, at the time of making them, was under an impression of approaching death, and had never actually so expressed himself, *MAYNE, J.* in receiving the evidence, sent it to the jury as a collateral issue, to determine whether the deceased, at the time of making them, conceived himself in a dying state. They decided in the affirmative, and the declarations were admitted in evidence.

The question of consciousness of approaching death, sent as a collateral issue to the jury, before receiving dying declarations in evidence.

*McKinnon, Carrickfergus Sum. Ass. 1833.* The prisoner was indicted for the murder of his wife. They had quarrelled; and in the struggle, he had thrown her down, and kicked her in the stomach. Shortly previous to the trial she said, "I fear I never will recover; Sam (meaning the prisoner) often wished for my death, and he has got his wish at last." The prisoner, objected to the reception of this evidence, as there was no foundation laid, by independent evidence of her apprehension of approaching death.

Evidence that the deceased was aware of approaching death, may be furnished by the dying declaration itself.

*J.* I think the whole declaration taken together, at once lays a foundation and erects the superstructure. The subsequent words, "Sam wished for my death &c.," furnish a most satisfactory explanation of which the preceding expression, "I never will recover," was to be used. I shall therefore receive the evidence.

Apprehension of approaching death may be shewn by acts and words, as well as the expressions of the deceased, see *R. v. Bonner*, 6 B. & C. 121.

*Re, Monaghan Sum. Ass. 1835.* Murder. The mortal wound was given on the 15th of May, 1835. On the 16th, the deceased was visited by a magistrate, who asked him did he think his life in danger. The reply was, "Yes, I think so." On the 17th, he was visited by the same magistrate, to the same question, he said, "I have very good reason to think I shall not live the same day, he observed to his wife that he might live three or four days, and might be carried off in as many hours. She answered—"you will be over you." His reply was, "I doubt I won't; I don't expect

A mere apprehension that a wound may terminate fatally, is not enough to let in evidence of declarations.

for the prisoner, cited *R. v. Van Butchell*, 3 C. & P. 629. [and see *Walsbury*, 7 C. & P. 187.]  
The prisoner refused to receive the declaration in evidence.

9 G. 4, c. 15.

In cases of variance between written evidence and the record, the court may order the record to be amended.

9 Geo. 4, c. 15(a). Whereas great expence is often incurred, and delay or failure of justice takes place at trials, by reason of variances between writings produced in evidence and the recital or setting forth thereof upon the record on which the trial is had, in matters not material to the merits of the case; and such record cannot now in any case be amended at the trial, and in some cases cannot be amended at any time: for remedy thereof be it &c., that it shall and may be lawful for every court of record holding plea in civil actions, any judge sitting at nisi prius, and any court of oyer and terminer and general gaol delivery in England, Wales, the town of Berwick-upon-Tweed, and Ireland, if such court or judge shall see fit so to do, to cause the record on which any trial may be pending before any such judge or court, in any civil action, or in any indictment or information for any misdemeanor, when any variance shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular by some officer of the court(b), on payment of such costs (if any) to the other party, as such judge or court shall think reasonable; and thereupon the trial shall proceed, as if no such variance had appeared; and in case such trial shall be had at nisi prius, the order for the amendment shall be indorsed on the postea, and returned together with the record; and thereupon the papers, rolls, and other records of the court from which such record issued, shall be amended accordingly.

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## SECTION 2.

### Of Witnesses.

Witnesses for the prisoner, in cases of 4 felony, shall be sworn, and shall be punishable for perjury.

9 Anne, c. 6, s. 9 (c).—That from and after the said last day of September (1710), all and every person and persons who shall be produced or appear as a witness on the behalf of the prisoner, upon any tryal for murder or felony, before he or she be admitted to give any manner of evidence, shall first take an oath to depose the truth, the whole truth, and nothing

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(a) Entitled "*An act to prevent the failure of justice, by reason of variances between records and writings produced in evidence in support thereof.*"

(b) This discretion of the court ought to be very sparingly exercised in criminal cases, *R. v. Cooke*, 7 C. & P. 559. See also *Jelf v. Orrell*, *Id.* 92.

(c) Entitled "*An act for taking away the benefit of clergy in certain cases, and for taking away the book in all cases, and for repealing part of the statute for transporting felons.*" All the other parts of this statute have been repealed by the acts 9 Geo. 4, c. 53, and 10 Geo. 4, c. 34.

but the truth, in such manner as the witnesses for the queen <sup>9 Anne, c. 6.</sup> are by law obliged to do; and if any witness be convicted of wilful perjury in such evidence, he shall suffer all the punishments, penalties, forfeitures, and disabilities, which, by any of the laws and statutes of this realm, are or may be inflicted on persons convicted of wilful perjury.

38 Geo. 3, c. 26, s. 2.—To prevent delay in bringing up persons in execution, to give evidence upon trials to be had at the assizes, or before commissioners of oyer and terminer and gaol delivery; be it enacted, that it shall and may be lawful to and for justices of assize, nisi prius, or commissioners of oyer and terminer and gaol delivery, by order in writing to be by them respectively signed, to direct any person in execution, and in the custody of any sheriff or other officer in any county wherein they shall sit, to be brought up for the purpose of giving evidence in any cause or trial to be had before them respectively.

Justices of assize &c., may order persons in execution to be brought up to give evidence.

3. [*Sheriffs &c., if sued for so bringing up any person in execution, may plead the general issue; and if the plaintiff discontinue, be nonsuit, or have a verdict against him, the defendant shall have double costs.*]

45 Geo. 3, c. 92, s. 3.—And whereas it is fit to provide for the appearance of persons to answer in cases where warrants are not usually issued, and to give evidence in criminal prosecutions in every part of the united kingdom; be it further enacted, that the service of every writ of subpœna, or other process, upon any person, in any one of the parts of the united kingdom, requiring the appearance of such person to answer or give evidence in any criminal prosecution in any other of the parts of the same, shall be as good and effectual in law as if the same had been served in that part of the united kingdom where the person so served is required to appear; and in case such person so served shall not appear according to the exigence of such writ or process, it shall be lawful for the court out of which the same issued, upon proof made of the service thereof to the satisfaction of the said court, to transmit a certificate of such default, under the seal of the same court, or under the hand of one of the judges or justices of the same, to the court of King's Bench in England, in case such service was had in England, or in case such service was had in Scotland, to the court of justiciary in Scotland, or in case such service was had in Ireland, to the court of King's Bench in Ireland; and the said last mentioned courts respectively, shall and may thereupon proceed against, and punish the person so having made default, in like manner as they might have done, if such person had neglected or refused to appear, in obedience to a writ of subpœna or other process issued out of such last mentioned courts respectively.

On criminal prosecutions, service of subpœna ad testif. in one part of the united kingdom, shall be good to compel appearance in any other part.

4. Provided always, and be it further enacted, that none of

17 G. 3, c. 32. such last mentioned courts shall, in any case, proceed against or punish any person for having made default by not appearing to give evidence in obedience to any writ of subpoena or other process for that purpose, unless it shall be made to appear to such court, that a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence, and of returning from giving such evidence, had been tendered to such person, at the time when such writ of subpoena or other process was served upon such person.

No such witness shall be punishable for non-attendance, unless his expenses have been paid.

A witness cannot refuse to answer, on the ground of subjecting himself to a suit for debt.

In prosecuting for forgery, the party whose name is forged shall be a competent witness.

Enduring the punishment for felony, shall have the effect of a pardon.

46 Geo. 3, c. 37 (a).—Whereas doubts have arisen whether a witness can by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to any penalty or forfeiture, but the answering of which may establish, or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of his majesty, or of some other person or persons. Be it therefore declared and enacted by &c., that a witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only, or on the sole ground, that the answering of such question may establish, or tend to establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of his majesty, or of any other person or persons.

9 Geo. 4, c. 32 (b), s. 2.—That on any prosecution by indictment or information, either at common law or by virtue of any statute, against any person for forging any deed, writing, instrument, or other matter whatsoever, or for uttering or disposing of any deed, writing, instrument, or other matter whatsoever, knowing the same to be forged, or for being accessory before or after the fact, to any such offence, if the same be a felony, or for aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor; no person shall be deemed to be an incompetent witness in support of any such prosecution, by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument, or other matter.

3. And whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged; be it &c., that where any offender hath been or shall be convicted of any felony not punishable with death,

(a) Entitled "*An Act to declare the law with respect to witnesses refusing to answer.*"

(b) Entitled, "*An act for amending the law of evidence in certain cases.*"

and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same; the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal, as to the felony whereof the offender was so convicted: provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other felony. 9 G. 4, c. 32.

4. And whereas there are certain misdemeanors which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; be it therefore enacted, that where any offender hath been or shall be convicted of any such misdemeanor, (except perjury or subornation of perjury,) and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be, by reason of such misdemeanor, an incompetent witness, in any court or proceeding, civil or criminal. No misdemeanor (except perjury) shall render a party an incompetent witness, after he has undergone the punishment.

9 Geo. 4, c. 54, s. 14.—That every person convicted of a felony which was not excluded from the benefit of clergy before or on the first day of the present session of parliament, and which hath not been, and shall not be made punishable with death by any statute passed after that day, shall, after having suffered the punishment awarded by the court upon such conviction, be a competent witness. Convicts of felony (not capital) shall, after punishment, be deemed competent witnesses.

1 & 2 Will. 4, c. 44 (a), s. 8.—And whereas doubts have arisen whether the courts of oyer and terminer or gaol delivery, or the courts of quarter sessions, and other courts having jurisdiction in criminal cases in Ireland, have power to fine persons who refuse or decline to obey the summonses of such court to attend as witnesses; be it declared and enacted, that it shall and may be lawful for every court in Ireland, having by law jurisdiction over criminal offences, upon proof being made of the service, either personally or at the residence of the person or persons required to attend, of any summons to appear and give evidence in such court touching any offence, to impose upon the person so served, in case of his or her disobeying such summons, such fine or fines as the court shall in its discretion think proper, and to direct that the same shall be levied and raised in manner hereinafter mentioned. Court may fine witnesses who do not attend.

9. That it shall and may be lawful to and for the judge, assistant barrister, or recorder presiding at any court of assize,

(a) Entitled, "*An Act to amend an act passed in the parliament in Ireland in the fifteenth and sixteenth years of the reign of his Majesty King George the Third, intituled, 'An act to prevent and punish tumultuous risings of persons within this kingdom, and for other purposes therein mentioned.'*"

2 W. 4, c.  
11.

Court may  
order fine  
to be immedi-  
ately levied.

gaol delivery, sessions, or other court as aforesaid, immediately on any recognizance being estreated, or any juror or witness fined, to forthwith order the clerk of the crown, clerk of the peace, town clerk, or other officer of such court, to issue his warrant to the sheriff or sheriffs of any county, or county of a town, or county of a city, commanding him or them forthwith to levy the amount for which such recognizance shall be estreated or fine imposed, on the body and goods of the person or persons against whom such warrant shall issue, as is usual in the recovery of forfeited recognizances; and that the sum so to be levied shall, after deducting thereout the sum of sixpence per pound, and no more, on the money actually levied and received by such sheriff or sheriffs, be forthwith paid to the treasurer or other officer of the infirmary of the county, county of a city, town, or place wherein such court shall be held, for the use of such infirmary, in case there shall be any such infirmary established within or for such county, county of a city, town, or place; and in case there shall be no such infirmary, then to the treasurer or other proper officer of such other public charity within such county, city, town, or place, as such court shall by its order for that purpose direct; and every such clerk of the crown, clerk of the peace, town clerk, or other officer of such court shall keep an account in a book to be provided for that purpose, of the amount of every such forfeited recognizance and fine, specifying the place and time and order whereby such recognizance was forfeited or fine imposed, and the name or names of the person or persons on whom such forfeiture or fine was imposed; and shall, within fourteen days next after such recognizance shall be forfeited or fine imposed, transmit an abstract from said book to the treasurer or other proper officer of the infirmary of the county, city, town, or place, or to the treasurer or other officer of any public charity within such county, city, town, or place, where there shall not be such infirmary; and that every such book shall at all seasonable times be open to the inspection of such treasurer or other officer, for the purpose of ascertaining what sums of money may be due and payable under this act; and that such clerk of the crown, clerk of the peace, town clerk, or other officer shall, at each spring and summer assizes in every year, post and affix on the door of the court house or place in which the assizes shall be holden, a true copy of so much of such book as contains all the recognizances or fines forfeited and imposed since the first day of the preceding assizes, to be then and there kept, posted, and affixed during the whole of such assizes; and shall, within fourteen days after the conclusion of such assizes, cause a true abstract to be inserted in some one public newspaper published or circulated within such county, city, or town; and if any clerk of the crown, clerk of the peace, town clerk, or other officer shall omit or neglect to keep such account as

foresaid, or to post or publish the same in manner required by this act, or if any such account or abstract shall in any particular be untrue or deficient, or if any sheriff or sheriffs shall neglect or omit to pay over to such treasurer or other proper officer the amount levied by him or them within ten days after he shall levy the same, every such clerk of the crown, clerk of the peace, town clerk, or other officer, or sheriff or sheriffs, shall for every such offence, neglect, or omission, forfeit the sum of one hundred pounds, to be recovered, with full costs of suit, by any person who will sue for the same in any of his majesty's courts of record in Ireland, by action of debt, bill, plaint, or information, in which no protection, or essoign, or wager of law, nor more than one imparlance, shall be allowed.

1 & 2 W. 4, c. 44.

3 & 4 Will. 4, c. 49(a), s. 1. Whereas it is expedient and reasonable that the solemn affirmation of persons of the persuasion of the people called Quakers, and of Moravians, should be allowed in all cases, where an oath is or shall be required; be it therefore, &c., that every person of the persuasion of the people called Quakers, and every Moravian, be permitted to make his or her solemn affirmation or declaration, instead of taking an oath, in all places and for all purposes whatsoever, where an oath is or shall be required, either by the common law, or by any act of parliament already made or hereafter to be made, which said affirmation or declaration shall be of the same force and effect as if he or she had taken an oath in the usual form. And if any such person making such solemn affirmation or declaration shall be lawfully convicted, wilfully, falsely, and corruptly, to have affirmed, or declared any matter or thing, which, if the same had been in the usual form, would have amounted to wilful and corrupt perjury, he or she shall incur the same penalties and forfeitures as by the laws and statutes of this realm are enacted against persons convicted of wilful and corrupt perjury; any law, statute, or custom to the contrary notwithstanding. Provided always, that every such affirmation or declaration shall be in the words following, (that is to say):—"I, A. B., being one of the people called Quakers, [or, one of the persuasion of the people called Quakers, or, of the united brethren called Moravians, (as the case may be,) do solemnly, sincerely, and truly declare and affirm."

Quakers or Moravians may affirm or declare, in all cases where an oath is required; and shall be punishable for perjury.

3 & 4 Will. 4, c. 82(b), s. 1. Whereas there are in various

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(a) Entitled, "*An act to allow Quakers and Moravians to make affirmation in all cases where an oath is or shall be required.*" This act appears to have superseded, though not expressly repealed, the 9 Geo. 4, c. 32, s. 1.

(b) Entitled, "*An act to allow the people called Separatists to make a solemn affirmation and declaration instead of an oath.*"



... & W. 4, c.  
-2.

Separatists,  
instead of  
swearing,  
may affirm,  
as herein.

places in Ireland, and in some parts of England and elsewhere, certain dissenters from the united church of England and Ireland, and from the church of Scotland, commonly called Separatists, the members of which class or sect of dissenters, from conscientious scruples, refuse to take an oath in courts of justice and other places; and in consequence thereof are exposed to great losses and inconveniences in their trades and their concerns, and are subject to fines, and to imprisonment for contempt of court, and the community at large are deprived of the benefit of their testimony. And whereas it is therefore expedient, that the said sect called Separatists should be relieved in manner hereinafter mentioned; be it &c., that every person for the time being belonging to the said sect called Separatists, who shall be required upon any lawful occasion to take an oath in any case where by law an oath is or may be required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in these words following; viz., "I, A. B. do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare that I am a member of the religious sect called Separatists; and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect; and I do also, in the same solemn manner affirm and declare;" which said solemn affirmation or declaration shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect, to all intents and purposes, in all courts of justice and other places whatsoever, where by law an oath is or may be required, as if such Separatists had taken an oath in the usual form(a).

A member of the church of Scotland cannot be sworn in criminal cases without kissing the book.

(a) *Rex v. Campbell, Carrickfergus Lent Ass. 1836.* Larceny. The prosecutor, the Rev. H. Cooke, a Presbyterian clergyman, and one of the Synod of Ulster, being called on to give evidence, declined taking the oath in the usual manner, by kissing the book. He said, that although he admitted that form to be binding on his conscience, yet that he and a large body of Presbyterians had entertained religious scruples on the subject, conceiving it superstitious; and that in the church courts of the Presbyterian body, the form of adjuration was by holding up the hand.

Gibson argued in support of the prosecutor's views, and referred to the 21 & 22 Geo 3, c. 57, which enables Seceders, in all except criminal cases, to swear by holding up the right hand. He also cited *Coll v. Dutton*, 2 Sid. 6; *Omichund v. Barker*, 1 Atk. 21; *Atcheson v. Excrutt*, *Coup. &c.*; *Mee v. Reid*, Pea, N.P.C. 23; *Mildrone's Case*, Lea, C.C. 349; *R. v. Gilham*, 1 Esp. 285; *Edmonds v. Rowe*, R. & M. 77.

Joy C. B. (after consulting with BUSHÉ C.J.)—I feel considerable difficulty in departing from the usual course; for, in doing so, I feel that I must prepare myself to yield to every individual who declares his repugnancy to taking the oath in the ordinary way, and thus much inconvenience may ensue. In the Seceders' Act, 21 & 22 Geo. 3, c. 57, there is a legislative

2. That if any person making such solemn affirmation or declaration, shall in fact not be one of the people commonly called Separatists, or shall wilfully, falsely, and corruptly affirm or declare any other matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury; every such person so offending shall incur the same penalties and forfeitures, as, by the laws and statutes of this kingdom, are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

3 & 4 W. 4, c. 82.

Persons not Separatists, affirming; or being such, and affirming falsely, punishable for perjury.

6 & 7 Will. 4, c. 13, s. 4. That if any question shall arise as to the right of any magistrate, or of any inspector, sub-inspector, chief constable, or head constable, or sub-constable, to hold or execute any such office respectively, common reputation shall, to all intents and purposes, be deemed and held to be sufficient evidence of such right; and it shall not be necessary to produce any appointment, or any oath, affidavit, or other document or matter whatsoever, in proof of such right.

Reputation shall be evidence of the appointment of stipendiary magistrates and police constables.

6 & 7 Will. 4, c. 55, s. 25. That on the trial of any action, indictment, or other proceeding respecting the property of any society enrolled under the authority of this act, or in any proceedings before any justice of the peace, any trustee, manager, member, officer, clerk, or servant of such society, shall be a competent witness, and shall not be

Members, &c., of loan societies to be competent witnesses.

declaration of the common law, and a recital of the hardships endured by a sect (not an individual), from a strict compliance with the law. The act then introduces a relaxation in their favour, but specially provides that nothing therein contained shall enable them to give evidence in criminal causes, or to be sworn on juries &c. I shall allow Dr. Cooke to be sworn according to the form of oath which I have prepared, or in such other manner as he may think binding on his conscience, but, having serious doubts on the question, shall reserve it for the twelve judges, should a conviction take place. If they think this mode of swearing improper, the prisoner ought, of course, to be pardoned.

The prosecutor was then sworn as follows:—"I, the Rev. H. Cooke, do solemnly and in the presence of God, swear, that the taking of an oath in the ordinary form in which it is administered, by kissing the holy evangelists, is contrary to my conscience; and I do solemnly and in the presence of God, swear, in the manner which I think binding on my conscience, that the evidence which I shall give to the court and the jury on this trial shall be the truth, the whole truth, and nothing but the truth. So help me God."

The prisoner having been convicted, the case was submitted to the judges, a great majority of whom was of opinion that the conviction was erroneous, the prosecutor not having been duly sworn; and that the prisoner ought, therefore, to be recommended for a free pardon.

*Res v. Logan, Lifford Lent Ass. 1837.* Murder. One of the witnesses called for the prosecution was a Scotch covenantor, who refused to be sworn, save with uplifted hand. *Smyly*, for the crown, urged the uniform practice

A Scotch Covenantor cannot be sworn in cri-

c & 7 W. 4, c. 59. objected to, on account of any interest he may have in the result of such action, indictment, or other proceeding(s).

minal cases  
with uplifted  
hand.

of criminal courts, and cited *Archb. Pl. & Ev.* 156, 5th ed. BUSH C. J. felt himself bound by the decision of the twelve judges in *Rex v. Campbell*, viz that whenever an oath is taken, it must be taken in the usual way, by kissing the book, unless when otherwise provided for by statute. Having consulted with MOORS, J. in the next court, he refused to let the witness be examined.

(a) The following cases have been decided upon the law of evidence in criminal cases:—

The corrobor-  
ation of an  
accomplice  
should be in a  
part of his  
testimony  
affecting the  
prisoner.

*Rex v. Green, Dundalk Lent. Ass. 1825.* The prisoner was indicted for the murder of a person named *Markey*, on the 6th of November, 1824. The dying declaration of *Markey* was given in evidence, from which it appeared that he had been attacked, robbed, and wounded by two men on his return from market. *Hoey*, an accomplice, stated minutely the circumstances of the murder, and that having taken a wallet, a pair of brogues, and a piece of cloth from *Markey*, he and the prisoner returned to *Green's* house, at *Drogheda*. That *Green* desired his wife to pledge the brogues; upon which she went out, and soon after returned, saying that she had done so for two and six pence. *Hoey* the elder, father of the approver, said that his son and the prisoner had been in his house almost all the day. That towards evening they went out, one about a quarter of an hour after the other, and did not return until after he had gone to bed, which he did about eight o'clock. That, upon his awaking, which he supposed to be about nine o'clock, both were sitting together at the fire. He asked them where they had been, and one of them said, at a dance. The pawnbroker's clerk produced his book, by which it appeared that a pair of brogues had been pawned on the 6th of November for two and six pence, in the name of *A. Green*.

The learned judge (JEBB J.) in his charge to the jury, after recapitulating the evidence, said—It is clear that the deceased has been murdered by a shot; and the question for you is, whether the approver is corroborated in his account of the part which the prisoner took in the transaction. Although the testimony of an accomplice alone is legal evidence on which a jury may convict, an instance is rarely found in which a jury will be satisfied to convict upon it, because he stands in so degraded a state from the crimes of which he confesses himself guilty, that but little credit is due to him; and the temptation to save his own life is so strong, that he can seldom be trusted, unless corroborated in some material circumstances. But if the jury should be satisfied, from uncontaminated evidence, that he speaks truth in a material particular affecting the prisoner, they may then act on the entire of his testimony. The circumstances in which the accomplice is corroborated are, the description of the transaction itself, the time, the place, and all the particulars of the attack, robbery, &c. with a difference as to the number of shots. The deceased said he believed there were two; the accomplice says there was but one, in which he is corroborated by several other witnesses. But even though you should think that he has deviated from the truth in this particular, with a view to make himself appear less criminal in the transaction than he really was, still it ought not to affect the credit you may give him in another particular in which he is corroborated—and he is corroborated here in many circumstances. The opinion I hold is, that corroboration of the approver in all the general facts of the case is not enough, unless he is also corroborated in some particular attaching guilt to

Here, the approver's father proves that the approver and the prisoner went out that evening, one about a quarter of an hour after the other, about such a time as would permit them both to arrive at the spot of the murder. In this respect, you have a corroboration affecting the prisoner. He also tells you that about nine o'clock they were both at the fire, and one of them said they had been at a dance. They were associates; and the answer of one being heard by the other, was the answer of both. The father, though not liable to the same objection as his son, yet stands in that situation, which calls on you to investigate with great care: for it may be said that he comes here to support the testimony of his son, and thus assist in saving his life. There is no circumstance, that of the brogues. The wife of the prisoner said in his examination that she had pawned the brogues for two and sixpence; and the pawnbroker says that a pair of brogues had been pawned that evening under the name of *A. Green*, for two and sixpence; you will also observe that the prisoner has not given any account of where he passed that evening, but is, in fact, guilty.

*Corberry, Armagh Lent Ass. 1826.* In this case, the law as to the corroboration of approvers was similarly laid down by *VANDELEUR, J.* who held that approbation, as the determination of the majority of the twelve jurors, that a corroboration as to the facts of the transaction is not sufficient, unless there be some proof connecting the prisoner with the transac-

NOTE.

*Treatise of the learned Chief Baron (Joy) on the evidence of accomplices, and also R. v. Hastings, 7 C. & P. 152; R. v. Neal, Id. 168; R. v. Jones, Id. 272.*

*Irrelly and another, Trim Lent Ass. 1832.* Burglary. The prisoners were asked did they know *M<sup>c</sup>Entee*, which they positively answered in the affirmative. No other witness proved that *M<sup>c</sup>Entee* and the prisoners had lived together several weeks in the same house, which they had taken from the prisoner. *BUSHE, C. J.*, allowed this to go to the jury as evidence, in corroboration of the approver.

*Nash, Maryborough Sp. Com. 27th May 1832.* Indictment for murder with intent to kill. A witness for the prosecution having identified the prisoner, was asked whether he had seen him after the commission of the offence, and, if so, whether any one had pointed him out to the counsel for the prisoner objected to both questions, but the court (*J. and SMITH, B.*) at once overruled the objection. And the attorney mentioned a case which had occurred at the special commission in 1831, in which a prisoner had been convicted under these circumstances:—The witness, upon a day between the commission of the offence and the trial, identified the prisoner as one of the party concerned in it. But, at the trial, in consequence of some alteration which had taken place in the prisoner's appearance, the witness was unable to identify him, and swore however, that the man whom he had previously identified was the man who had been in the commission of the offence. Another witness then proved, that the prisoner so identified was the prisoner.

As the evidence of the prosecutor was, that the prisoner, with two other persons, two of whom he named, broke into his house at such a time as would permit them to arrive at the spot of the murder, that the prisoner stabbed him in the breast with a bayonet. On the examination of the prisoner, a witness was produced to prove an *alibi* for the two persons named. The attorney general objected to this evidence; but the court held the evidence to be admissible, and that the presence of the individuals named was proved to be not one of those purely collateral facts, as to which no counter evidence could be adduced.

The untrue denial by a prisoner, of his acquaintance with an approver, is evidence to corroborate the evidence of the approver.

Identification of a prisoner at the trial effected by shewing that he is the same person whom the witness had previously identified.

Evidence having been given that an offence was committed by the prisoner, *A. B.* being present, proof was admitted of an *alibi* of *A. B.*

## NOTE.

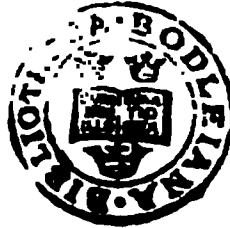
As to the evidence of identity of a thing stolen, see *R. v. Munnah*, 1 *Rec. N. S.* 84.

A person cannot be examined as a witness for one with whom he is jointly indicted for.

*Reg v. Duffy, Monaghan Sum. Ass.* 1833. This was a joint indictment against several, for riot and assault. One of the persons who was included in the joint indictment, but who was not put upon trial, was produced as a witness for the others. Sir *T. Staples*, for the crown, contended that he was an incompetent witness, having been jointly indicted with the *trave* *Holmes*, for the prisoners, argued, that it was analogous to the case of co-trespassers; in which case, one might be produced on behalf of the others. *Bush* C.J. said, that he rather thought the very point had been decided by the twelve judges; and that the distinction was, that where several persons are *jointly* indicted, any one of them, though not upon his trial, might be a witness for the others who may be upon their trial; but where persons are *separately* indicted, one of the persons indicted, who has not been put upon trial, is competent on the trial of any of the others who are indicted, 1 *Phil. Ev.* 40.

See this case reported on another point, *Alc. & Nap.* 441. a.

As to the law of evidence in criminal cases generally, see *Arch. Pl. & Ev.* *Rosc. Ev. Cr. Ca. passim*; and *Stark. Law of Ev.* under the proper heads.



## CHAPTER XII.

### OF THE TRIAL.

*20 Hen. 6, c. 9, Eng. [Sec. 1 recites Magna Charta, c. 29.]*

(2) In which statute is no mention made how women, ladies of great estate, in respect of their husbands, peers of the land, married or sole, that is to say, duchesses, countesses, or baronesses, shall be put to answer, or before what judges that they shall be judged upon indictments of treasons or felonies by them committed or done; in regard whereof it is a doubt in the law of England, before whom, and by whom such ladies so indicted shall be put to answer, and be judged; (3) our said lord the king, willing to put out such ambiguities and doubts, hath declared by authority aforesaid, that such ladies so indicted, or hereafter to be indicted, of any treason or felony by them done, or hereafter to be done, whether they be married or sole, that they thereof shall be brought to answer, and put to answer, and judged before such judges and peers of the realm, as peers of the realm should be, if they were indicted or impeached of such treasons or felonies done, or hereafter to be done, and in like manner and form, and in none otherwise.

Ladies of peers shall be tried by the same tribunals as their husbands.

*3 Hen. 7, c. 3, Eng.* (5) And moreover it is enacted by the same authority, that every sheriff, bailiff of franchise, and every other person having authority or power of keeping of gaol or of prisoners for felony, in like manner and form do certify the names of every such prisoner in their keeping, and of every prisoner to them committed for any such cause, at the next general gaol delivery in every county or franchise where any such gaol or gaols have been or hereafter shall be, there to be kalendred before the justices of the deliverance of the same gaol; whereby they may, as well for the king as for the party, proceed to make deliverance of such prisoners, according to the law; (6) upon pain to forfeit unto the king, for every default thereof recorded, *C. s.*

Sheriffs &c. shall cause the names of all prisoners to be kalendred, for the justices of gaol delivery.

*3 Hen. 7, c. 1, Eng.* (14) That if any man be slain or murdered, and thereof the slayers, murderers, abettors, maintainers, and comforters of the same be indicted, that the same slayers and murderers, and all other accessories of the same be arraigned and determined of the same felony and murder at any time at the king's suit, within the year after the same

Persons indicted of murder may be tried immediately.

H. 7, c. 1.

felony and murder done, and not tarry the year and day for any appeal to be taken for the same felony or murder.

4 Anne, c. 11(a), s. 1. [*To prevent horse-stealing, the proprietor of every fair and market overt, shall yearly fix an open place where horses are to be sold, and appoint a toll-keeper there to enter the sales in a book, which, within one day, shall be delivered to the proprietor.*]

2. [*That the sale, exchange &c., of any stolen horse in fair or market overt, shall not alter the property therein, unless it be ridden or kept openly in such fair, not in a house or yard, for one hour between 10 A.M. and sunset; and unless all parties to the contract shall go with the horse to the book-keeper, who shall enter their names and places of residence, together with the colour, marks, and price of the horse. That no horse shall be sold, unless the bookkeeper know the seller, or that some person will vouch for him: and the name of the person who vouches shall also be entered, and a ticket of all, given to the buyer, he paying three pence. On non-compliance herewith by any party, he shall forfeit twenty shillings, and the sale shall be void.*]

Jury shall not inquire of prisoner's lands or goods.

9 Geo. 4, c. 54. s. 11.—That where any person shall be indicted for treason or felony, the jury impannelled to try such person shall not be charged to inquire concerning his lands, tenements, or goods, nor whether he fled for such treason or felony.

Proceedings upon the estreat of recognizances.

34. And whereas the practice of indiscriminately estreating recognizances for the appearance of persons to prosecute or give evidence, or to answer for a common assault, or in the other cases hereinafter specified, has been found in many instances productive of hardship to persons who have entered into such recognizances; be it therefore enacted, that in every case where any person bound by recognizance for his or her appearance, (or for whose appearance any other person shall be so bound) to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault, or to articles of the peace, shall therein make default, the officer of the court by whom the estreats are made out, shall, and such officer is hereby required to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person, or his or her surety, was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall, in such list, distinguish the principals from the sureties, and shall state the cause, if known, why each such person has not appeared, and whether by reason of the non-appearance of such person, the ends of justice have been defeated or delayed; and every such officer shall, and such officer

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(a) Entitled, "*An act against horse-stealing, and to prevent the buying and selling of stolen horses: and for punishing all accessories to felons.*"

is hereby required, before any such recognizances shall be 9 G. 4, c. 54.  
 estreated, to lay such list, if at a court of oyer and terminer  
 or gaol delivery in any county, before one of the justices of  
 those courts respectively; and if at a court wherein a recorder  
 or other corporate officer is the judge, or one of the judges,  
 before such recorder or other corporate officer; and if at a  
 session of the peace, before the assistant barrister or two other  
 justices of the peace, who shall have attended such court, who  
 are respectively authorised and required to examine such list,  
 and to make such order touching the estreating or putting in  
 process any such recognizance as shall appear to them respec-  
 tively to be just; and it shall not be lawful for the officer of  
 any court to estreat or put in process any such recognizance  
 without the written order of the justice, recorder, corporate  
 officer, assistant barrister, or justices of the peace, before whom  
 respectively such list shall have been laid.

6 & 7 Will. 4, c. 114(a).—Whereas it is just and reasonable  
 that persons accused of offences against the law should be  
 enabled to make their full answer and defence to all that is  
 alleged against them; be it &c., that from and after the first Persons  
accused of  
felony may  
make full  
defence by  
counsel or  
attorney.  
 day of October next [1836] all persons tried for felonies shall  
 be admitted, after the close of the case for the prosecution, to  
 make full answer and defence thereto, by counsel learned in  
 the law, or by attorney in courts where attornies practise as  
 counsel.

2. And be it further declared and enacted, that in all cases On summary  
convictions,  
full defence  
may be made.  
 of summary conviction, persons accused shall be admitted to  
 make their full answer and defence, and to have all witnesses  
 examined and cross-examined, by counsel or attorney.

3. That all persons who after the passing of this act shall Persons held  
to bail or  
committed,  
may have  
copies of all  
informations  
sworn against  
them.  
 be held to bail or committed to prison for any offence against  
 the law, shall be entitled to require and have, on demand,  
 (from the person who shall have the lawful custody thereof, and  
 who is hereby required to deliver the same) copies of the exa-  
 minations of the witnesses respectively, upon whose depositions  
 they have been so held to bail or committed to prison, on  
 payment of a reasonable sum for the same, not exceeding three  
 halfpence for each folio of ninety words: provided always,  
 that if such demand shall not be made before the day appointed  
 for the commencement of the assize or sessions at which the  
 trial of the person on whose behalf such demand shall be made  
 is to take place, such person shall not be entitled to have any  
 copy of such examination of witnesses, unless the judge or  
 other person to preside at such trial shall be of opinion that  
 such copy may be made and delivered without delay or incon-  
 venience to such trial: but it shall nevertheless be competent

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(a) Entitled, "An act for enabling persons indicted of felony to make their  
 defence by counsel or attorney."



6 & 7 W. 4, c.  
114.

All depositions made, may be inspected at the trial.

for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

4. That all persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had.

#### NOTE.

When the defendant has been arraigned, and has pleaded to the indictment, and before he is given in charge to the jury, it is the proper time for a motion to postpone the trial, whether it be on his behalf, or on that of the crown; or if he have pleaded not guilty, *R. v. Claxton (a)*, and even before he has pleaded at all, *Grubbins's Case*, *Lew. C. C.* 314, he may in certain cases traverse in prox.

Traverse in prox.

By the general rule of law, all persons charged with felony or misdemeanor at the assizes or sessions, are, on the finding of the indictment, bound to plead and submit to trial *instantly*, 1 *Ch. C. L.* 483. But certain exceptions exist in favour of those charged with misdemeanor, and which prevail in all such cases, unless taken away by a special statute, as by the 5 & 6 *Will. 4, c. 48, s. 6, ante* 169. Thus, a party who has not been in custody, or out on bail, twenty days, in respect of the charge, or who has not received twenty days' notice of the indictment found against him, is entitled, as of right, to put off his trial until the next assizes or sessions. And the right exists, although the party may have been twenty days in custody, on a charge arising out of the same transaction, if the degree of the accusation be altered; as if he were committed for felony, and the bill be found for misdemeanor, *R. v. Wakefield, Talf. Dick. Sess.* 334, *Lew. C. C.* 311. If a party have been held to bail, or committed for more than twenty days, on a charge of felony, and the grand jury ignore the bill for felony (rape), and find a bill for a misdemeanor in attempting it, the party is entitled to traverse, *R.*

A defendant may traverse in prox. after plea.

(a) *Re v. Claxton, Kildare Sum. Ass.* 1832. The prisoner having been made amenable to justice within twenty days, was arraigned on the first day of the assizes. On a subsequent day, counsel on his behalf applied to traverse in prox. under the 60 *Geo. 3, c. 4, s. 5*. This was resisted on the part of the crown, inasmuch as, by pleading to the indictment on the first day of the assizes, he forfeited the statutory privilege; but, JESS J. admitted him to do so, conceiving that at common law the right to traverse existed after plea, and that the same right existed under the statute, when the traverser had not been twenty days committed.

*v. James*, 3 C. & P. 222. He has been also allowed to do so at the assizes, when remitted there from sessions within twenty days, *R. v. Bermingham (a)*. An indictment quashed by consent at one assizes, does not operate as a notice of trial under a new indictment found at the next assizes, so as to deprive the defendant of his right to traverse, *Anon. Lew. C. C.* 309.

NOTE.

The court has always authority, if it think fit, to put off the trial either in felonies or misdemeanors, *Burn J. Trial*; but unless under particular circumstances, the postponement is seldom longer than for the next term or assizes, *Bac. Abr. Trial, H. pl. 5*. In Ireland, when prosecutions are conducted by the crown officers, a right is frequently insisted on by them to have the trial postponed, as a matter of course, and without any affidavit, provided the defendants have been made amenable since the last assizes; but this rests altogether in the discretion of the court, *R. v. Scully (b)*.

Postponing the trial.

The indulgence of a postponement has been granted to prosecutors in cases of felony, when they are material witnesses, and have been necessarily absent on their private affairs; but

(a) *R. v. Bermingham, Monaghan Sum. Ass. 1832*. On the 17th of June the defendant was arrested on a charge of misdemeanor, and gave bail to appear and take his trial at the next quarter sessions, which were held on the 25th of June. The assistant barrister on that day remitted the case to the assizes, which were held on the 9th of July. True bills having been there found, *Scriven*, for the defendant, insisted on his right to traverse in prox. (the twenty days—counting from the 25th of June—not having elapsed,) which was denied by *Sir T. Staples, Pervin*, and *Gilmore*, for the crown. But *SMITH B.* allowed the traverse.

(b) *R. v. Scully, Philipstown Lent Ass. 1831*. Indictment under 10 Geo. 4, c. 34, s. 14, for feloniously shooting with intent to kill. The prisoner was apprehended in December, 1830. Having been indicted at the present assizes, counsel for the crown applied to postpone the trial, upon an affidavit that diligent inquiry had been made for the discovery of evidence, and that further evidence was expected. The application was opposed.

The crown can never, as of right, postpone the trial of a prisoner, without an affidavit.

*BUSHN. C. J.* held that it was discretionary in the judge to postpone it or not; that, on the one hand, the crown had no right to have the trial postponed; and, on the other, the prisoner had no right, at the first assizes after being made amenable, to call for a discharge upon bail or otherwise, unless two circumstances concurred, viz. 1st, that he should remain unindicted at those assizes; and 2ndly, that he should, on the first day of the assizes, have applied in open court, by prayer or petition, to be brought to trial. Neither of these circumstances exists here. If they both concurred, the prisoner, under the habeas corpus act (21 & 22 Geo. 3, c. 11, s. 6, ante 508), would be entitled to a discharge upon bail, unless it should appear to the court upon oath, that the witnesses for the king could not be produced at those assizes. But the court here acts upon its own discretion, which the mere perusal of the informations is sufficient to satisfy, even if no affidavit had been made. Let the trial be postponed, and the prisoner remain in custody.

**NOTE.** in this latter case, the prisoner will be allowed to go at large upon his own recognizance, *Cow's Case*, *Lew. C.C.* 131, 315; *R. v. McConville (a)*. The general rule is, that the court will not postpone a trial at the instance of either party, unless the application be made before the prisoner is given in charge, *R. v. Hopes (b)*, and be founded upon affidavit of the facts relied on, and notice given to the opposite party, that he may have an opportunity of controverting them, 1 *Ch. C. L.* 492. Properly, the affidavit ought to be made by the prosecutor or defendant, but in cases of absence, or inability otherwise to do so, the affidavit of an attorney, or even of a third person, has been received, *Bac. Abr. Trial, H.*; *Day v. Sampson, Burnes*, 448; *Duberly v. Gunning, Pea. N.P.C.* 97. The most usual ground for delay is the absence of a material witness: and this cause, when properly verified, has been held sufficient in the most serious offences, and though the prosecution be carried on at the expense of the crown, *Fost.* 2; *Bac. Abr. Trial, H.* The affidavit should state that the absent party is a material witness, without whose evidence the party cannot safely go to trial; that the applicant has used all his exertions to procure his attendance, by causing him to be

Trial postponed in the absence of the prosecutor (a material witness) on his private affairs.

(a) *R. v. McConville, Downpatrick Lent Ass.* 1837. Forgery of a bill of exchange. The indictment was found at the last assizes; but, at the prisoner's request, and with the prosecutor's assent, the trial was postponed. The party remained out on bail. Having appeared, pursuant to his recognizance,

*Hayes*, for the crown, moved that the trial should be further postponed. The prosecutor is now, and has been for some weeks past, absent in England on his private affairs. He is a material witness in the case, as appears from the informations; and, owing to his absence, no steps have been taken to secure the presence of other material witnesses, who are resident in Scotland. He cited *Cow's Case*, *Lew. C. C.* 131; and contended that the bringing on this trial in the absence of all the witnesses upon whose testimony the indictment had been found by the grand jury, would be going further than was contemplated by the habeas corpus act, 21 & 22 *Geo. 3, c. 11, s. 6*, of the benefits of which the prisoner had not attempted to avail himself.

*Porter*, contra, cited *R. v. Leedmore*, 7 *C & P.* 497, and contended that the trial ought not to be postponed without an affidavit of the usual facts.

*Joy, C. B.* ordered the trial to be postponed; and that the prisoner should stand out on his own recognizance in 50*l.*, to appear and take his trial at any future assizes, when called on by the prosecutor, by a fourteen days' notice in writing, left at his last known place of abode in Ireland.

(b) *R. v. Hopes, Carrickfergus Sum. Ass.* 1835. Indictment for conspiring to forge a will. After the prisoner had been given in charge, *McDonald* (with whom was *Whiteside*), for the prisoner, moved to postpone the trial; and *Kinloch's Case*, *Fost.* 16; *R. v. Stokes*, 6 *C & P.* 15, were cited.

*MOORE J.* You are too late, after the prisoner has been given in charge. I do not think I have any jurisdiction except upon consent.

A trial cannot be postponed, after the prisoner has been given in charge for a felony.

NOTE.

served with a subpoena or crown summons &c., or that he has endeavoured so to do without effect; that there is reasonable ground to expect his attendance at the time to which it is sought to postpone the trial; and that the application is not made for delay, *R. v. D'Eon*, 1 *Bl.* 510, 3 *Burr.* 1513; *R. v. Jones*, 8 *East.* 31. The absence of a witness to character is not a sufficient ground, *R. v. Jones*. If a material witness for the defendant be in custody, an order will be made that his attorney shall have liberty to visit him in prison in the presence of the governor, to prepare for the defence, *R. v. Simmonds*, 7 *C. & P.* 176. Where a material witness, upon being examined, appears to have no sense of the obligation of an oath, or of a future state of retribution, so that he cannot legally be sworn, the court may put off the trial, even in a capital case, and order him to be, in the mean time, instructed by a clergyman in the principles of moral obligation *R. v. White*, 1 *Lea. C. C.* 430 n; but this must be done before the prisoner has been given in charge, else the trial must proceed, *R. v. Wade*, *Moo. C. C. R.* 86. Where the issue to be tried is the collateral one of the identity of the prisoner, the party is to be tried *instantly*, *R. v. Rogers*, 3 *Burr.* 1809; unless he will himself make a positive affidavit that he is not the party meant, *R. v. Radcliffe*, 1 *Bl.* 3. The illness of the defendant's attorney is a sufficient ground for the postponement of a trial, *Hayley v. Grant*, *Say. R.* 63; or the publication of libellous matter tending to influence the jury in their decision of the case, *R. v. Jolliffe*, 4 *T. R.* 285. Upon an indictment for embezzlement, the court will postpone the trial, if the defendant cannot, upon his application, procure from the prosecutor a particular of the specific acts intended to be relied on, in time to make his defence, *R. v. Hodgson*, 3 *C. & P.* 422. When an accomplice fully and fairly discloses the joint guilt of himself and his companions, and is admitted as a witness against his fellows, whereby he acquires an equitable claim, though no absolute right, to the mercy of the crown, the court will put off his trial, if prosecuted, in order that he may have time to apply for a pardon, *R. v. Rudd*, *Cowp.* 339. A party being prosecuted for extortion, an order was sent to the clerk of the crown, under the sign manual, directing him to enter a cesser of prosecution; but the court directed the trial to proceed, saying they were not to delay for the great or little seal, whereupon the attorney-general entered a *nolle prosequi*, *R. v. Benson*, 1 *Ventr* 33.

At any time before the verdict is recorded, the attorney general may, in his discretion, stop a criminal prosecution, whether it be by indictment or information, by causing a *nolle prosequi* to be entered, *R. v. Roper*, *ante* 119; and this he will do, either at the instance of the prosecutor or defendant, upon a proper case made. Thus, if he perceive that a party has been indicted in two forms for the same offence, *R. v. Roper*, or that vexatious proceedings are had recourse to, as

Nolle prosequi.

NOTE. By frequently preferring defective indictments for the same supposed offence, *R. v. Guerchy*, 1 *Bl.* 545. or indicting for offences which are clearly not indictable, *R. v. Pond*, Com. *R.* 312; or that the prosecutor is proceeding by civil action for the same cause, in which latter case the party will be compelled by the court to make his election, or the attorney general will enter a *nolle prosequi*, *R. v. Fielding*, 2 *Burr.* 720; *Jones v. Clay*, 1 *B. & P.* 191. In order to obtain it, the defendant should procure from the clerk of the crown or peace, a certificate of the whole substance of the indictment, and of the time when it was preferred, to which he must annex an affidavit, verifying the signature of the officer, and also that he has been served with process in the civil action at the suit of the prosecutor for the same cause. Upon this, the attorney general, if he think the conduct of the prosecutor oppressive, will issue a summons calling on him to shew cause before him, why a *nolle prosequi* shall not issue, and on his default, after a second or third summons, he will issue his warrant to the clerk of the crown or peace, directing him to enter it, *Cro. C. C.* 22. Or he may direct the criminal proceedings to be removed by certiorari into the King's Bench, and have the matter argued before him there by counsel, *R. v. Guerchy*, 1 *Bl.* 545. A *nolle prosequi* may be entered as to one of several defendants, even after they have been found guilty, *R. v. Hempstead*, *Russ. & Ry.* 344. The clerk of the crown cannot enter a *nolle prosequi* on an indictment, even at the instance of the prosecutor, without leave from the attorney general or his representative; and if entered, it will be set aside, *R. v. Cranmer*, 1 *Ld. Raym.* 721. The effect of a *nolle prosequi*, when obtained, is to put the defendant "without day," but it does not at all operate as an acquittal; for he may be afterwards reindicted, and even, upon the same indictment, fresh process may be awarded, *Goddard v. Smith*, 6 *Mod.* 261; 1 *Ch. C. L.* 479.

If giving the  
prisoner in  
charge to the  
jury.

If no motion be made for a postponement, or being made, it be refused, the next step is to give the prisoner in charge to the jury. This is done by the clerk of the crown, who addresses the jury thus:—"Gentlemen of the jury, A. B. stands indicted for that he, on &c. [reading the purport of the indictment from his book, as upon the arraignment.] He has pleaded not guilty, your issue is to try and inquire whether he is guilty or not of the felony [or misdemeanor] upon which he is given to you in charge."

If the case be one of importance, or the facts be complicated, it is usual to open it by a statement of the circumstances, which is made by the senior counsel for the prosecution. In doing this, it is not usual to endeavour to aggravate the case, but to confine himself to the facts which he thinks will be proved in evidence, 1 *Ch. C. L.* 555. Neither ought he to detail conversations or confessions, but merely state their general effect to the jury, *R. v. Deering*, 5 *C. & P.* 165; *R. v. Swatkins*.

NOTE

**4 C. & P. 548.** After the speech of the leading counsel, the witnesses are examined in support of his case; and, in ordinary cases, this is the first step. When the examination of each witness has closed, he is cross-examined by the prisoner's counsel; but if nothing have been elicited prior to the cross-examination, which tends to bring guilt home to the prisoner, it is usual for counsel, with the permission of the court, to postpone the cross-examination until that has been done.

The case for the prosecution having closed, the counsel for the prisoner is then at liberty to address the jury; and as well to state the case intended to be made for the defence, as to comment on the evidence adduced for the crown. When he has concluded, the prisoner's witnesses are called, and examined and cross-examined; after which the crown counsel may again address the jury in reply, and thus the case closes on both sides. The judge then sums up the evidence, selecting the facts applicable to each prisoner, and making such observations upon the law as he thinks right, for the direction of the jury in finding their verdict, 1 *Ch. C. L.* 632. When he has concluded, the issue paper is handed to the jury, and they retire to consider their verdict.

Having thus given a hasty outline of the proceedings on a criminal trial, we shall endeavour to fill it up by comments upon its several parts.

In many cases, it is a matter of serious importance for the investigation of truth, that none of the witnesses should be present, except the one immediately under examination, until their evidence has been given. Accordingly it is usual for the court, at the prayer of either party, at any period of the trial, to direct that the witnesses shall be excluded, and not allowed to come within hearing until brought in for examination, *Southey v. Nash*, 7 *C. & P.* 632; *R. v. Hanly (a)*.

Exclusion of witnesses.

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(a) *R. v. Hanly, Trim Lent Assizes.* Murder. After the jury had been sworn, counsel for the prisoners applied to the court to have the witnesses on both sides put out of court during the examination of any previous witness. They insisted upon it as a matter of right, and cited *Archb. Cr. L.* 114. This was controverted for the crown, and 1 *Chit. Cr. L.* 617, was relied on. The crown however, was willing to exclude all the witnesses except two magistrates whom it was intended to examine, but whose assistance, in the mean time, was required. *BUSHE*, C. J. asked the crown counsel to what matters it was intended to examine them; and, being informed that it was to corroborate the principal witness for the prosecution as to the identity of the prisoners, he said he did not conceive that he could make them exceptions. He considered it as a matter of discretion with the court to remove the witnesses: but a discretion which it was almost bound to exercise, at the request of the prisoner, if, in so doing, it did not defeat the ends of justice. In order to guard against this, the court would inquire into the circumstances upon which it was sought to found an exception. And not considering them sufficient here, it excluded all the witnesses.

It is in the discretion of the judge whether the witnesses shall be excluded, and in such case, will except none, save upon good cause shewn.

**NOTE.** This order however, does not extend to requiring lists of witnesses to be exchanged, *R. v. M<sup>c</sup>Carron*(a), but only that if any witness shall persist in remaining in court, the judge may refuse to have him examined, or may commit him, or fine him for the contempt, *Boyle's Case*, *Lew. C. C.* 325; *Parker v. M<sup>c</sup>Williams*, 6 *Bing.* 583.

Of illness during the trial.

We have already considered the proceedings to be taken when the trial is interrupted by the illness of a juror, *ante* 591. If the prosecutor or a witness be seized with illness, during a trial and before his examination, the jury cannot be discharged, but the trial must proceed, even though an acquittal be the necessary consequence, *R. v. Kell*(b). If the prisoner himself become so ill that he cannot remain at the bar, the investigation must be suspended; and if he be not likely to recover in a reasonable time, the jury ought to be discharged. Upon his recovery, he may be tried by another jury, *R. v. Stevenson*, *Lea. C. C.* 618.

Of the right to speak, &c.

When the prosecution is conducted by the attorney general, or those who represent him, the right to a reply exists though no evidence should be given on the part of the prisoner, *R. v. Lord Abingdon*, *Pea.* 236, 1 *Esp.* 227; *R. v. Radcliffe*, 1 *Bl.* 6, *Moo. C. C.* 496, 7 *C. & P.* 677; but if it be conducted by the counsel of a private prosecutor, he cannot reply, unless evidence be given for the prisoner, or facts be opened by his counsel which he declines supporting by evidence, *R. v. Bignold*, 4 *D. & R.* 70; and if the evidence called, be only

Where witnesses are ordered out of court, lists need not be exchanged.

(a) *R. v. M<sup>c</sup>Carron*, *Monaghan Sum. Ass.* 1834. Murder. The witnesses on both sides were ordered to withdraw. The crown counsel desired that lists of witnesses should be exchanged; which was resisted by the counsel for the prisoner.

BUSHE, C. J. It is not a part of the rule that a list of witnesses shall be given; but only, that no one shall be examined who has been present in court.

The jury having been discharged of a prisoner, on account of the illness of the prosecutrix, he cannot again be put upon trial for the offence.

(b) *R. v. Kell*, *Carrickfergus Spring Ass.* 1809. The prisoner was indicted for a rape. The prosecutrix, when she came upon the table to give evidence, appeared in a very delicate state of health, and greatly agitated. A medical man having been appointed by the court to examine her, reported it as his opinion, that if she were then to give her testimony, her life might be endangered. Upon this, the learned judge, with the consent of the prisoner's counsel, discharged the jury. A point was then made that the prisoner could not again be put upon his trial. It was reserved for the consideration of the twelve judges, who (as it was afterwards reported to the bar by Fox, J.) were of opinion that the prisoner could not again be tried. That the cases where a jury had been discharged of a prisoner, and he afterwards tried, were only where the prisoner himself, [or a juror, *ante* 591,] had been visited by some unforeseen malady. They thought it wrong to establish any precedent whereby a judge might exercise his discretion on the subject, and that the consent of the prisoner's counsel in no wise altered the case. The prisoner was therefore, acquitted and discharged.

NOTE.

to character, it is not expected, save in very peculiar cases, as where there may be some definite charge to cross-examine them to, that he will insist on his right, either of cross-examination or reply, *Moo. C. C.* 496, 7 *C. & P.* 677; *R. v. Hodgkiss*, 7 *C. & P.* 298; *R. v. Stannard*, 7 *C. & P.* 673. If the evidence be collateral to the issue, as if it were given merely to establish the incompetency of a witness, or the like, there can be no reply, *Dover v. Mestaer*, 5 *Esp.* 96. If the affirmative of the issue should be on the defendant, he begins, and of course has the right to reply, *Pea. Ev.* 54; 1 *Ch. C. L.* 628. But this must be taken subject to the rights of the attorney or solicitor general, who may always insist upon the last word, *Id. ibid.* A prosecutor who conducts his case in person, and who is to be examined as a witness in support of the indictment, has no right to address the jury as counsel, *R. v. Brice*, 2 *B. & A.* 606; *R. v. Milne*, *ibid.*; but the defendant may address the jury in person, provided he also cross-examine the witnesses; and in such a case, counsel may argue questions of law, or suggest questions for the cross-examination, *R. v. White*, 2 *Campb.* 98; *R. v. Parkins*, 1 *C. & P.* 548, *Ry. & M.* 166. If there are several defendants, none of whom have counsel, all may address the jury and examine the witnesses, in the order in which they are named in the indictment, 1 *C. & P.* 322. *n.* If all have separate counsel, they usually address the jury according to seniority; and after all the addresses are finished, then they each make out their case by witnesses, according to seniority. This course has however, been departed from, when convenience palpably required it, and each counsel, immediately after his address to the jury, proceeded to sustain his case by evidence, *Id. ibid.* Where there were two defendants, one of whom appeared by counsel, and the other not, the defendant in person, was allowed to cross-examine before counsel, and also, to address the jury and call his witnesses before the counsel entered upon the defence of his client, *R. v. Cooke*, 1 *C. & P.* 321. The defendant being entitled to a copy of all depositions made against him, his counsel may cross-examine the crown witnesses, or comment in his speech, on their contents or deficiencies; but previously to his doing so, the depositions themselves must be read as part of the evidence for the prisoner, *Moo. C. C.* 495, 7 *C. & P.* 676.

It frequently happens, that when several indictments have been preferred and found against the same person, it is sought by the crown to have all sent to the jury at once. In such cases, it is usual for the court to put the counsel for the prosecution to his election on which of the indictments he will first proceed, so that the defendant may not be embarrassed or distracted in making his defence, or prejudiced in his challenges, *Young v. Rex*, 3 *T. R.* 106; but the court, in so doing, will not quash the other indictment—a course which



## NOTE

it seldom adopts, after the party has pleaded, *R. v. Frith*, 1 *Lea. C. C.* 11; and never, after he has been given in charge to the jury, *R. v. Hopkins(a)*,—or direct an acquittal upon it. Such was the course pursued when two indictments were found, one for night-poaching, and the other for assaulting a game-keeper, both offences arising out of the same transaction, *R. v. Handley*, 5 *C. & P.* 565. So also, where one indictment was for robbery, and the other for a concomitant assault, *R. v. Byrne(b)*; or one for poisoning, and the

An indictment cannot be quashed, after the prisoner has been given in charge.

Indictments having been found against a prisoner for a robbery, and a concurrent assault; held that both cannot be tried together, and the crown having made its election, the court refused to direct an acquittal or to quash the other.

(a) *Rex v. Hopkins*, *Mullingar Sum. Ass.* 1832. The prisoner was indicted for the robbery of Mary Kelly. After the case had been gone into, it appeared that she was a married woman. The indictment, therefore, which laid the property in her could not be sustained. The prosecutor applied to quash it. But SMITH, B. after conferring with TORRENS, J. declined doing so, conceiving that the prisoner, having been given in charge to the jury, was entitled to a verdict.

(b) *Rex v. Byrne*, *Maryborough Lent Ass.* 1832. Two indictments were preferred and found against the prisoner; one, for robbing a police constable of his gun, the other for assaulting him. The latter indictment contained four counts: 1. for beating and wounding him, so as to inflict upon him a grievous bodily harm; 2. for beating &c., so as to endanger life; 3. for assaulting him in the execution of his duty; and 4. for a common assault. The assault was concurrent with the robbery. Counsel for the crown having proposed to put the prisoner on his trial, in the first instance, for the misdemeanor alone, the prisoner's counsel insisted that the judge ought to put the crown counsel to their election, and quash the other indictment; or direct an acquittal on it, upon the authority of a note in *Harrison's Index*, p. 886, stating a decision of *Vaughan, B.* in *Rex v. Smith*, 3 *C. & P.* 412. Counsel for the crown contended that the offences were distinct; for though, in law, robbery was said to include and imply an assault; yet, that was rather an ascertainment and fixing of the mode by which the owner was deprived of his property. That here, the violence which inflicted a grievous bodily harm, must have been quite distinct from that which was used to deprive the constable of his gun. That, upon an indictment for robbery, a prisoner could not be found guilty of an assault; neither, to an indictment for an assault, could a prisoner plead *autrefois acquit*, or *convict* of the robbery. That, although the offences were distinct, they arose out of the same transaction, and could not therefore, embarrass or distract the prisoner in his defence. Neither had they that repugnancy which would prevent a prisoner's being found guilty of both. That if the indictment for one offence should be quashed, and the prisoner acquitted of the other, it would be competent for the crown immediately to send a bill of indictment to the grand jury precisely similar to that which had been quashed; and, upon its being found, put the prisoner again upon his trial.

BUSHE, C. J. This is the case of a criminal charge, which is a felony involving in it a misdemeanor; and in which the presence or absence of one or more circumstances may make the offence, in point of law, the one or the other; as in the case of stabbing with intent to kill, maim, or disable; or of rape, where the circumstances necessary to the perpetration of the crime are doubtful. Both charges involve an assault. And the practice has been loose and irregular in dealing with such cases; for, instead of sending up a second

ther for a conspiracy to poison, *Maudsley's Case*, *Lew. C. C.* 15. But in one case, where, in one indictment, the party was charged with cutting with intent to murder, and in another indictment, the same act was laid as a common assault; Mr. Baron Vaughan put the prosecutor to his election which he would go upon, and directed an acquittal upon the other, *R. v. Smith*, 3 C. & P. 412.

NOTE.

It may also happen, that although several counts have been legally joined in the same indictment, yet, because an atten-

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indictment, when the first has failed upon the trial, it has been usual to have the two bills found at once, and sometimes to try the two charges together. I consider it wrong to send up the two bills together: but if it should be done, it ought always to be accompanied by a direction to the grand jury to choose between them, and not to find two bills inconsistent with each other; by which the grand jury would at the same moment say that the offence was a felony, and was only an assault, which would imply it was not a felony. In this case, that has been done, and it remains to consider what is now the proper course. It would be in many ways dangerous to justice, in any case, to let two such charges be tried together, as it would afford the opportunity of a compromising verdict, and might press upon the prisoner and embarrass his defence, and would also tend to perplex and mislead the jury. I have therefore no doubt about complying with so much of the prisoner's application as requires me to put the counsel for the crown to their election between the two indictments; but I am not disposed to go further, and quash, or direct an acquittal upon, the other. As to quashing one;—Suppose there were but the one indictment for the felony, and that the prisoner were acquitted upon it, from defective evidence; I do not think it can be doubted that he might be immediately indicted for the misdemeanor: and there being now two indictments on the crown book makes no difference, if on one only he is brought to trial. But as to directing an acquittal;—Suppose that I should comply with this application, the crown electing to proceed with the felony; if the prisoner should be acquitted of that, he could not be effectually prosecuted for the misdemeanor, as the record of his acquittal under my direction would make that impossible; and justice would fail. In coming to this opinion, I feel a difficulty from the alleged opposite opinion by Mr. Baron VAUGHAN; but, without fuller information as to the circumstances of the case before him, than the short note referred to affords, I cannot take a course which appears to me objectionable upon principle.

The prisoner was put on trial by the crown counsel for the felony. The second witness was objected to on the ground of his having remained in court, contrary to a consent entered into; whereupon the crown consented to the prisoner's acquittal, after which, he was tried for the misdemeanor, and convicted.

So, in *Rex v Killeen, Mullingar Lent Ass. 1832*, the prisoner was indicted for burglary and stealing in a dwelling house; and also for receiving. The prosecutor having elected to proceed upon the former, an application was made to SMITH B. to quash the latter indictment, but he declined to do.

## NOTE.

tion to all the charges might distract or prejudice the defendant, the court will quash some of the counts, if he has not pleaded; or, if it be not discovered until after that, will put the prosecutor to his election as to which he will go on, and direct an acquittal as to the others, *Young v. Rex*, 3 T. R. 106. But these are matters of prudence and discretion, and if omitted, will not affect the validity of the indictment, or the legality of the conviction, *R. v. Galloway*, Moo. C. C. 234. Where the same indictment contains counts for larceny and for receiving, it is reasonable to put the prosecutor to his election, *Id. ibid*, *R. v. Flower*, 3 C. & P. 413. And the persons who draw indictments ought not to join such, *R. v. Madden*, Moo. C. C. 277, *Lew. C. C.* 83. But where the indictment was for a larceny of several articles which most probably had been taken at different times, the prosecutor ought not to be put to his election as to what articles he would proceed, *R. v. Dunn*, *Carr. Supp.* 82. And in an indictment for an indecent exposure, he may give in evidence several instances, *Rowbattel's Case*, *Lew. C. C.* 83. So, in an indictment, one count was for shooting with intent to kill A., and in another, to kill B., yet it was held that the prosecutor need not be put to his election, *Butler's Case*, *Lew. C. C.* 86. On an indictment against several persons, the counsel for the prosecution has a right, before opening his case, to the acquittal of any defendant he intends to call as a witness, *R. v. Rowland*, *R. & M.* 401. If a prosecutor close his case, and then the defendant's counsel point out a defect in it, the court is at liberty to put what questions it thinks fit to answer the objections, *R. v. Remnant*, *Russ. & Ry.* 136.

## Adjournment.

If it should be impossible for the trial to be concluded in one day, the court may adjourn from day to day, until the whole of the investigation has been completed. This, although sometimes done with the consent of the prisoners, and which consent it is always desirable to obtain, may nevertheless be effected by the court of its own authority, and that, in a case of murder, or even high treason itself; for necessity justifies what it compels, *R. v. Stone*, 6 T. R. 530; *R. v. Clay*, 7 C. & P. 276; 4 Bl. Com. 360, *Fost.* 23; *R. v. Hanly(a)*. When an adjourn-

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(a) *R. v. Hanly and others*, *Trim Lent Ass.* 1830. Rape. The case for the prosecution not having concluded at the close of the day, BUSHÉ C. J. directed that the proceedings should be adjourned until next morning. The consent not only of the counsel on both sides, but also of each of the prisoners was required; and the jury were kept in the grand jury room, with suitable accommodation. This was stated to have been the first case of an adjournment of a criminal trial in Ireland. A similar course was pursued by the same learned judge in the case of *R. v. Judge*, *Maryborough Sum. Ass.* 1835, which was a prosecution for murder.

ment is resolved on, an entry of it should be made, in which it may be well to recite the necessity which led to it, *R. v. Stone*; and all this it seems most proper to do in the present tense, 2 *Hawk. c. 5, s. 15*. The jury then retire to a tavern or other convenient place for entertainment, where they are kept together by one or more bailiffs, who have been previously sworn, "well and truly to keep the jury, and neither to speak to them themselves, nor suffer any other person to speak to them, touching any matter relative to this trial," *R. v. Stone*. If however, the indictment be for a misdemeanor, the judge may in his discretion permit the jury to go to their own homes, *R. v. Kinnear, 2 B. & A. 462*; *R. v. Pinney, 7 C. & P. 277 n.*

NOTE.

# CHAPTER XIII.

## OF THE VERDICT AND JUDGMENT.

Sentence of death may be passed upon convicted felons by other judges than those who tried them.

10 *Car. 1, Sess. 2, c. 14(a), s. 5.* That in all cases where any person or persons heretofore have been, or hereafter shall be found guilty of any manner of treason, murder, manslaughter, rape, or other felony whatsoever, for the which judgement of death should or may ensue, and shall be reprived to prison, without judgement at that time given against him, her, or them so found guilty, that all and every person or persons that at any time hereafter, shall by the king's commission be assigned justice or justices, to deliver the goale where any such person or persons found guilty shall remaine, shall have full power and authority to give judgement of death against such person or persons so found guilty and reprived, as the same justice or justices (before whom such person or persons was or were found guiltie) might have done, if their commission of goale delivery had remained and continued in full force and strength.

And such judges may award execution if respited.

6. That in all cases, where any person or persons heretofore have been, or hereafter shall be adjudged and condemned of any manner of treason, or felony whatsoever, and shall be reprived, or the execution respited for any cause whatsoever, that every person or persons, which at any time hereafter shall by the king's commission be assigned justice or justices, to deliver the goale, where any such person or persons, adjudged and condemned as aforesaid, shall remaine not executed, shall have full power and authority to award execution upon every such judgement, against every such person or persons adjudged and condemned as aforesaid, in as large and ample manner and form, to all intents, constructions, and purposes, as the same justice or justices, by whom such judgement was given, might have done, (if no cause had to him or them appeared, for the stay, respiting, or deferring of the execution,) and as if his or their commission of goale delivery had remained and continued in full force and strength. And over that, no manner of processe or suite made, sued, or had, before any justice of assize, goale delivery, oyer and

No process shall be affected by

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(a) Entitled, "*An act for the continuance of actions after the death of any king.*"

terminer, justices of peace, or other of the king's commissioners, shall in any wise be discontinued by the making and publishing of a new commission, or association, or by altering of the names of the justices of assize, goale delivery, oyer and terminer, justices of peace, or other the king's commissioners; but that the new justices of assizes, goale delivery, and of the peace, and other commissioners may proceed in every behalfe, as if the old commissions and justices, and commissioners had still remained and continued not altered.

10 C. 1, S. 2,  
c. 14.

the issuing  
of a new  
commission.

56 Geo. 3, c. 138(a), s. 1. Whereas the punishment of the pillory, has in many cases been found inexpedient, and not fully to answer the purpose for which it was intended; be it therefore &c., that from and after the passing of this act, judgment shall not be given and awarded against any person or persons convicted of any offence, that such person or persons do stand in or upon the pillory, except for the offences herein-after mentioned; any law, statute or usage to the contrary notwithstanding. Provided, that all laws now in force, whereby any person is subject to punishment for taking any false oath, or for committing any manner of wilful and corrupt perjury, or for the procuring or suborning any other person so to do, or for wilfully, falsely, and corruptly affirming or declaring, or procuring or suborning any other person so to affirm and declare, in any matter or thing, which, if the same had been deposed in the usual form, would have amounted to wilful and corrupt perjury, shall continue and be in full force and effect; and that all persons guilty of any of the said several offences shall incur and suffer the same punishment, penalties, and forfeitures, as such persons were subject to by the laws and statutes of this realm, or any of them, before the passing of this act, and as if this act had not been made.

Judgment of  
the pillory  
shall only be  
for perjury  
and subor-  
nation of  
perjury.

2. That in all cases where the punishment of the pillory has hitherto formed the whole or a part of the judgment to be pronounced, it shall and may be lawful for the court before whom such offence is tried, to pass such sentence of fine or imprisonment, or of both, in lieu of the sentence of pillory, as to the said court shall seem most proper. Provided that nothing herein contained shall extend or be construed to extend in any manner to change, alter, or affect any punishment whatsoever, which may now be by law inflicted, in respect of any offence, except only the punishment of pillory, in manner as herein above is enacted.

Instead of  
the pillory,  
court may  
fine or im-  
prison for  
other of-  
fences.

1 Geo. 4, c. 57(b), s. 2. That from and after the passing of this act, judgment or sentence shall in no case whatever be

No female  
offender shall  
be whipped.

(a) Entitled, "An act to abolish the punishment of the pillory, except in certain cases."

(b) Entitled, "An act to repeal an act passed in the fifty-seventh year of the reign of his late majesty king George the Third," intituled, "An act to abo-

1 G. 4. c. 57.

given and awarded against any female or females convicted of any offence whatsoever, that such female offender or offenders do suffer the punishment of being whipped either publicly or privately; any law, statute, or usage to the contrary notwithstanding.

Solitary confinement and hard labour may be substituted.

3. That in all cases where the punishment of whipping, either publicly or privately, on female offenders, has hitherto formed the whole or part of the judgment or sentence to be pronounced, or has in any other case been inflicted, it shall and may be lawful for the court or justice of the peace before whom any such offender shall be tried or convicted, to pass sentence of confinement to hard labour in the common gaol or house of correction, for any space of time not exceeding six months, nor less than one month(a); or of solitary confinement therein for any space not exceeding the space of seven days at any one time, in lieu of the sentence of being publicly or privately whipped, as to the said court or justice shall seem most proper. Provided that nothing herein contained shall extend, or be construed to extend, in any manner to change, alter, or affect any punishment whatsoever which may now be by law inflicted in respect of any offence, save and except only the punishment of publicly or privately whipping on female offenders, in manner as hereinbefore is enacted.

Persons convicted of certain offences, may be sentenced to hard labour.

7 Geo. 4, c. 9 (b).—Whereas it is expedient to provide for the punishment of certain offences in Ireland by imprisonment with hard labour, in like manner as the same are punished in England; be it therefore enacted &c., that from and after the passing of this act, it shall and may be lawful for any court in Ireland to pass upon any person who shall be lawfully convicted before such court of any felony with benefit of clergy, or of any grand larceny, or of any petit larceny, sentence of imprisonment to hard labour, either simply and alone, or in addition to any other sentence which such court may or shall be authorised to pass upon any person lawfully convicted of any of the offences aforesaid, as to such court shall seem fit; and such person shall thereupon suffer such other sentence, and be moreover imprisoned and kept to hard labour, or be simply imprisoned and kept to hard labour, in such place and for such time, as such court shall think fit to direct, not exceeding the time for which such courts may now imprison for

lish the punishment of public whipping on female offenders; and to make further provisions in lieu thereof."

(a) This means lunar time, *Lacon v. Hooper*, 6 T. R. 224, 1 Esp. 246.

(b) Entitled, "An act to provide for the more effectual punishment of certain offences in Ireland, by imprisonment with hard labour." So much of this act "as relates to grand or petty larceny, or to receiving stolen goods, or to false pretences," has been repealed by the 9 Geo. 4, c. 53. s. 1. And so much as relates to any assault, has been repealed by the 10 Geo. 4, c. 34, s. 1.

such offences; and that from and after the passing of this act, whenever any person in Ireland shall be convicted of any of the offences hereafter specified and set forth; that is to say, *any assault with intent to commit felony; any attempt to commit felony; any riot; any misdemeanor for having received stolen goods, knowing them to have been stolen; any assault upon a peace officer, or upon an officer of the customs or excise, or upon any other officer of the revenue in the due discharge and execution of his or their respective duty or duties; any assault upon any person or persons acting in aid of any such officer or officers in the due discharge and execution of his or their respective duty or duties; any assault committed in pursuance of any conspiracy to raise the rate of wages; being an utterer of counterfeit money knowing the same to be counterfeit; knowingly and designedly obtaining money, goods, wares, or merchandizes, bills, bonds, or other securities for money, by false pretences, with intent to cheat any person of the same; keeping a common gaming house, a common bawdy house, or a common ill governed and disorderly house; wilful and corrupt perjury or subornation of perjury; having entered any open or inclosed ground with intent there illegally to destroy, take, or kill game or rabbits, or with intent to aid, abet, and assist any person or persons illegally to destroy, take, or kill game or rabbits, and having been there found at night armed with any offensive weapon; in each and every of the above cases, and whenever any person shall be convicted of any or either of the aforesaid offences, it shall and may be lawful for the court in Ireland before which any such offender shall be convicted, or which by law is authorized to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment with hard labour, for any term not exceeding the term for which such court may now imprison for such offences, either in addition to, or in lieu of any other punishment which may be inflicted on any such offenders by any law in force in Ireland before the passing of this act; and every such offender shall thereupon suffer such sentence in such place and for such time as aforesaid, as such court shall think fit to direct.*

7 G.4. c.9.

9 Geo. 4, c. 54, s. 12.—That benefit of clergy with respect to persons convicted of felony, shall be abolished; but that nothing herein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of this act.

Benefit of clergy abolished.

13. That no person convicted of felony shall suffer death, unless it be for some felony which was excluded from the benefit of clergy before or on the first day of the present session of parliament, or which hath been, or shall be made punishable with death by some act passed after that day.

What felonies only, shall be capital.

15. That every person convicted of any felony not punishable with death, shall be punished in the manner pre-

Felonies, not capital, punishable



9 G. 4, c. 54

according to  
the acts  
relating  
thereto, or  
as herein.

The court  
may order  
hard labour  
and solitary  
confinement,  
together with  
imprison-  
ment.

Judgment  
shall not be  
stayed or  
reversed for  
certain tech-  
nical defects  
in indictment  
or informa-  
tion.

What defects  
shall not  
vitate a  
judgment  
after verdict.

scribed by the statute or statutes specially relating to such felony; and that every person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this act; and shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

19. That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction; and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or with such imprisonment with hard labour, as to the court in its discretion shall seem meet.

31. And in order that the punishment of offenders may be less frequently intercepted, in consequence of technical niceties; be it enacted, that no judgment upon any indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default, or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of the words "against the form of the statutes," or vice versa; nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office or other descriptive appellation, instead of his, her, or their proper name or names, nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offence.

32. That no judgment, after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similiter, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer; and that where the offence charged shall be an offence theretofore

created by any statute, or subjected to a greater degree of punishment, or excluded from the benefit of clergy by any statute, the indictment or information shall, after verdict, be held sufficient, if it describe the offence in the words of the statute creating the offence or prescribing the punishment or excluding the offender from the benefit of clergy. 9 G. 4, c. 54.

4 Geo. 4, c. 48 (a), s. 1.—Whereas it is expedient that in all cases of felony not within the benefit of clergy, except murder, the court, before which the offender or offenders shall be convicted, shall be authorised to abstain from pronouncing judgment of death, whenever such court shall be of opinion that, under the particular circumstances of any case, the offender or offenders is or are a fit and proper subject or fit and proper subjects to be recommended for the royal mercy; be it therefore &c., that from and after the passing of this act, whenever any person shall be convicted of any felony, *except murder*, and shall by law be excluded the benefit of clergy in respect thereof, and the court before which such offender shall be convicted, shall be of opinion that, under the particular circumstances of the case, such offender is a fit and proper subject to be recommended for the royal mercy, it shall and may be lawful for such court, if it shall think fit so to do, to direct the proper officer then being present in court to require and ask, whereupon such officer shall require and ask, if such offender hath or knoweth any thing to say why judgment of death should not be recorded against such offender; and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the court shall and may and is hereby authorised to abstain from pronouncing judgment of death upon such offender; and instead of pronouncing such judgment, to order the same to be entered of record, and thereupon such proper officer as aforesaid shall and may and is hereby authorised to enter judgment of death on record against such offender, in the usual and accustomed form, and in such and the same manner as is now used, and as if judgment of death had actually been pronounced in open court against such offender, by the court before which such offender shall have been convicted.

Upon conviction of any felony, the court may, if it see fit, only record sentence of death.

2. That a record of every such judgment, so entered as aforesaid, shall have the like effect, to all intents and purposes, and be followed by all the same consequences, as if such judgment had actually been pronounced in open court, and the offender had been reprieved by the court.

The record of judgment, to have the same effect as if pronounced.

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(a) Entitled, “*An act for enabling courts to abstain from pronouncing sentence of death in certain capital felonies.*”

## NOTE.

General  
verdict.

The verdict to be given by the jury must be either general, special, or qualified. In all criminal cases, they are at liberty, if they think right, to find a general verdict of guilty or not guilty; and thus, taking upon themselves the consideration of both law and fact, may at once pronounce upon the whole charge laid in the indictment, 4 *Bl. Com.* 361; *Co. Litt.* 228. If all the counts in the indictment should be bad but one; and the jury give a general verdict, it will be sufficient to warrant an entire judgment, *R. v. Ingram*, 1 *Salk.* 384; *Peake v. Oldham*, *Cowp.* 276. To warrant the jury in giving a general verdict, it is only necessary to prove so much of the indictment as shews the crime therein specified to have been committed. Thus, a party may be found guilty on an indictment charging him with *composing*, printing, and publishing, if it be only proved that he printed and published, *R. v. Hunt*, 2 *Campb.* 583.

Special  
verdict.

But the jury may often deem it prudent to find the facts specially, and leave the inference to the court, and thus find a special verdict, 4 *Bl. Com.* 361. In doing this, no particular form of words is required. Every fact and circumstance necessary to constitute the offence should be positively stated; for the court can supply no such statements, *R. v. Huggins*, 2 *Ld. Raym.* 1574; and without them, it cannot pronounce judgment, 2 *Hawk. c.* 47, s. 9; but mere formal defects may be supplied or amended, even in capital cases, if there be any thing to amend by, *Id. ibid*; *R. v. Hayes*, 2 *Str.* 843. On a special verdict for murder, the court are judges of the malice; *R. v. Oneby*, 2 *Ld. Raym.* 1485, 2 *Str.* 766. The special verdict ought to correspond with the indictment in all material particulars, as in time, place, &c., when they should be proved as laid, *Com. Dig. Pleader*, S. 9-15, *Dowdall's Case*, 6 *Co.* 47. But the jury, after stating the facts, need not draw any legal conclusion, *R. v. Oneby*. And if they should do it erroneously, the court will reject so much of the verdict, as surplusage, *Heydon's Case*, 4 *Co.* 42, b. When several offences are charged in the same indictment, the court will enter an acquittal on those counts to which the facts detailed in the verdict do not apply, *R. v. Hayes*, 2 *Str.* 845. When the special verdict is found at assizes or sessions, it may be removed by certiorari into the King's Bench for argument, *R. v. Huggins*, 2 *Ld. Raym.* 1574.

Qualified  
verdicts.

Qualified or partial verdicts are of five kinds. 1. Where the indictment contains several counts, and the jury find the defendant guilty on some, and not guilty on others. 2. Where some of the defendants are found guilty, and the rest acquitted. 3. Where they find the defendant not guilty of the offence as laid in the indictment, but guilty of it divested

of certain aggravating facts or circumstances. 4. When they acquit the defendant on special grounds. 5. When they give a general verdict, but accompany it with a special case. The first three are, properly speaking, partial verdicts; and the last two, qualified verdicts.

NOTE.

As every count in the indictment contains a distinct charge, there is no doubt that the jury may acquit or convict on any of them, as they find the evidence applicable, 1 *Ch. C. L.* 637.

So also, on the same principle, they may find different defendants guilty on different counts; and the only limit to their authority in this respect is where a legal inconsistency would arise. Thus, where two are indicted for a conspiracy, both must be acquitted or both found guilty, unless the conspiracy be averred to have been entered into by the defendants with others. And where three are indicted for a riot and assault, one cannot be found guilty of the assault, and the others of the riot, except it be laid as committed with others, 2 *Hawk. c.* 47, s. 8. So also if A be indicted as principal, and B as an accessory; if A be acquitted, B cannot be found guilty, 1 *Ch. C. L.* 641.

In certain cases the jury are allowed to find the defendant guilty of a crime of the same nature and degree, although less atrocious than that laid in the indictment. Thus the party may be indicted for murder, and found guilty of manslaughter only; or he may be indicted for burglary or robbery, and found guilty of larceny, 2 *Hale* 302; or for an assault with intent to abuse and carnally know, and found guilty of the assault with intent to abuse only, *R. v. Dawson*, 3 *Stark.* 62; or for an assault with intent to commit a rape, and found guilty of a common assault, *Lew. C. C.* 16.

Upon an indictment for composing, printing, and publishing a libel, the party may be found guilty of the composing and publishing, and acquitted of the printing, *R. v. Williams*, 2 *Campb.* 646. If the indictment aver two intentions in the publication, the verdict may find only one, *R. v. Evans*, 3 *Stark.* 35. Where the indictment is for an offence against a statute, the defendant may be found guilty at common law, and the words *contra formam statuti* rejected as surplusage, 2 *Hawk. c.* 47, s. 168. Hence it would seem to follow that a party indicted for a malicious assault, under the 10 *Geo.* 4, c. 34, s. 29, might be found guilty of a common assault. The general rule is, that the party cannot be indicted for one offence and found guilty of another of a different degree, unless specially authorised by statute. See 10 *Geo.* 4, c. 34, s. 17. Thus, an indictment for felony will not sustain a finding of a misdemeanor, because he would, by that mode of indicting, lose the benefit of having a copy of the indictment, special jury, &c. *R. v. Westbeer*, 2 *Str.* 1137, 1 *Ch. C. L.* 639.

## NOTE.

If the defendant be found to have actually committed the offence charged, but to have done it while labouring under insanity, it is the duty of the jury then to find him not guilty, and to state specially that it is on account of his insanity, 1 & 2 Geo. 4. c. 33, s. 16, *post* 640, so that the court may be warranted in ordering his detainer.

The last sort of qualified verdict is one which, to the general verdict of guilty, has attached a special case, in which the facts and the evidence are set out, for the purpose of obtaining the opinion of the judges, *Palmer v. Johnson*, 2 Wils. 163; *R. v. Marks*, 3 East 164. This is pretty much the same as a special verdict, but with this difference, that the facts do not appear on the record, and the party thus loses the benefit of a writ of error. It has the advantage of being much less expensive, *R. v. Allen*, 15 East, 346. If the judges, upon considering the case, find that evidence has been improperly received, but that, even rejecting that, enough remains to sustain the conviction, they will not allow it to be disturbed, *R. v. Ball, Russ. & Ry.* 132; *R. v. Treble, Russ. & Ry.* 164.

## Effects of acquittal.

If the party be acquitted upon the merits, upon a sufficient indictment, he is for ever discharged from the accusation, and may plead *autrefois acquit*, if again indicted for that offence. But if the acquittal have arisen from a defect in the proceedings, he may be detained in order to be indicted in such a way as to answer the purposes of justice, 1 Ch. C. L. 649; 2 Lea. C. C. 662. Or if he be a petty officer, seaman, or marine, he may be detained in pursuance of the 44 Geo. 3, c. 13, *post* 639.

If the party be found guilty generally, the court then proceeds either immediately, or at some convenient interval to pass sentence upon him.

## Motion in arrest of judgment.

At any time between conviction and the actual passing of the sentence, a motion may be made on behalf of the defendant to arrest the judgment, *R. v. Hayes*, 11 Mod. 3 n.; *R. v. Robinson*, 2 Burr. 801; *R. v. Holt*, 5 T. R. 445. This can be grounded only on matter which appears on the face of the record, and which makes the proceedings apparently erroneous, *Sutton v. Bishop*, 4 Burr. 2287. Thus, objections to the jury, or to the evidence, form no grounds for arresting the judgment, *R. v. Sheppard*, 1 Lea. C. C. 105. It was formerly considered that every matter which would have justified a demurrer, would also sustain this motion; and accordingly, demurrers were but little resorted to, the party conceiving it more advantageous to defer his objections until he had first taken his chance of an acquittal; but now by the 9 Geo. 4, c. 54, s. 31, certain objections to the indictment therein detailed cannot be taken advantage of otherwise than by demurrer. Subject however to these exceptions, the rule would still seem

to prevail: and a motion in arrest of judgment may be sustained, if time or place be not stated, or improperly stated when they are material, 4 *Bl. Com.* 375; *R. v. Lookup*, 3 *Burr.* 1901, or if the facts detailed in the indictment do not disclose an offence, *R. v. Wheatly*, 2 *Burr.* 1125, or the like. Should the judge be of this opinion, even after a motion in arrest of judgment has been waived by the defendant, and after sentence pronounced, but before actual entry of the judgment, it seems he will himself, without motion, arrest the judgment, *R. v. Waddington*, 1 *East* 146. A motion in arrest of judgment can never be entertained after judgment against the defendant on demurrer, although it may, after a judgment by default, *R. v. Deman*, 2 *Ld. Raym.* 1221. Judgment on an indictment removed by certiorari, cannot be arrested until the defendant appears, 7 *Mod.* 39. And the defendant, in all cases at least where the punishment may be corporal, ought to be present in court when it is made, *R. v. Spraggs*, 2 *Burr.* 930; 2 *Hawk. c.* 48, s. 17.

When a motion in arrest of judgment is made at the assizes, and the judge thinks there may be good grounds for arresting it, the sentence is respited to take the opinion of the twelve judges. If the judge think otherwise, he then passes sentence; but he may, nevertheless, respite the execution in order to take the opinion of the judges upon the point, *Burn, J. Judgment*; 2 *Lea. C. C.* 1026. If the judgment be ultimately arrested, all the proceedings will be set aside, and judgment of acquittal will be given; but a new indictment may immediately be preferred, *Vaux's Case*, 4 *Co.* 45.

NOTE.

## CHAPTER XIV.

### OF ATTAINDER, EXECUTION, AND PARDON.

#### SECTION I.

#### *Of Attainder.*

The king shall hold the lands of felons but one year and a day.

The king shall have the goods of all felons, as also their lands, for a year and a day; and may waste them.

No attainder, except for high treason or murder, shall extend to disinherit the heir.

9 *Hen. 3 (Magna Charta), c. 22, Eng.*—We will not hold the lands of them that be convict of felony, but one year and one day; and then those lands shall be delivered to the lords of the fee.

17 *Edw. 2, c. 16, Eng.*—Also the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. (2) And if they have freehold, then it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day, and the land shall be wasted and destroyed in the houses, woods, and gardens; and in all manner of things belonging to the same land; excepting men of certain places privileged by the king therefore. (3) And after our lord the king hath had the year, day, and waste, then the land shall be restored to the chief lord of the same fee, unless that he fine before with the king for the year, the day, and the waste.

54 *Geo. 3, c. 145(a).*—Whereas it is expedient to make such provisions by law as are hereinafter contained; be it therefore &c., that no attainder for felony, which shall take place from and after the passing of this act, save and except in cases of the crime of high treason, or of the crimes of *petit treason* or murder, or of abetting, procuring, or counselling the same, shall extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender or offenders during his, her, or their natural lives only; and that it shall be lawful to every person or persons, to whom the right or interest of any lands, tenements, or hereditaments, after the death of any

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(a) Entitled, "An act to take away corruption of blood, save in certain cases."

such offender or offenders should or might have appertained, if 54 G. 3, c. 145.  
no such attainder had been, to enter into the same.

3 & 4 Will. 4, c. 106 (a), s. 10.—That when the person Attainder, when it shall not bar descent.  
from whom the descent of any land is to be traced, shall have had any relation who having been attainted shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land, who would have been capable of inheriting the same by tracing his descent through such relation, if he had not been attainted, unless such land shall have been escheated in consequence of such attainder before the first day of January, 1834.

4 & 5 Will. 4, c. 23(b), s. 3.—That no land, chattels, or Property vested in trustees, not to escheat, by attainder or conviction of trustee.  
stock (c) vested in any person, upon any trust, or by way of mortgage, or any profits thereof, shall escheat or be forfeited to his majesty, his heirs, or successors, or to any corporation, lord of a manor, or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place.

4. That the several provisions of this act shall extend to To what trusts this act shall apply.  
every case of a trustee having some beneficial estate or interest in the same subject, or some duty as trustee to perform, and also to every case of a trust arising or resulting by implication of law, or by construction of equity.

5. Provided always, and be it hereby enacted, that nothing Escheat of a beneficial interest in trustee not prevented.  
contained in this act shall prevent the escheat or forfeiture of any land, chattels, or stock, vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee; but such land, chattels, or stock, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this act had not passed(d).

(a) Entitled, "An act for the amendment of the law of inheritance."

(b) Entitled, "An act for the amendment of the law relative to the escheat and forfeiture of real and personal property holden in trust."

(c) By sec. 1, "land" is to be construed as meaning all real property,— "chattels" as all personalty except "stock;"—and "stock," any funds, annuity, or security transferable in the books of any company, or any money payable for the discharge and redemption thereof, or any share or interest therein."

(d) See further as to Attainder, its effects and consequences, ante 364.



## SECTION 2.

*Of Execution.*

Lord lieutenant may cause all felons, &c., under rule of transportation, to be transported.

30 Geo. 3, c. 32, s. 1. Whereas under the laws now of force for the transportation of felons and vagabonds under sentence, rule, or order of transportation, difficulties have occurred; in order therefore, to render the transportation of such felons and vagabonds more easy and effectual; be it enacted &c., that it shall and may be lawful for the lord lieutenant, or other chief governor or governors of this kingdom for the time being, to cause all felons and vagabonds who now are, or shall be under any sentence, rule, or order of transportation, to be transported and conveyed to such part or parts beyond the seas, and in such manner as the lord lieutenant or other chief governor or governors for the time being, shall think proper, any law or laws to the contrary thereof notwithstanding.

All expences shall be defrayed by treasury warrant.

2. That all such expences as the lord lieutenant or other chief governor or governors as aforesaid, shall judge to be necessary in providing for the transportation of such felons and vagabonds, in pursuance of this act, and for the conveying of them to such part or parts as shall be appointed, and all other necessary expences incident thereto, shall be defrayed by warrant of the lord lieutenant, or other chief governor or governors for the time being, to the proper officers of his majesty's treasury in this kingdom for the payment thereof.

Lord lieutenant may appoint penitentiary houses, and direct persons under rule of transportation to be confined therein.

32 Geo. 3, c. 27(a), s. 1. Whereas it might tend to reform and render useful members of society, persons sentenced to be transported, if such persons were compelled under proper rules and government, to work at useful trades, or to labour according to their skill and ability; be it therefore &c., that it shall and may be lawful for the lord lieutenant, or other chief governor or governors of this kingdom for the time being, to appoint one or more house or houses for the reception of persons under sentence or rule of transportation, or pardoned on condition of transportation, to be called penitentiary houses; and that it shall and may be lawful for the lord lieutenant or other chief governor, by warrant under his hand, to order and direct at his will and pleasure, any person or persons now in this kingdom, under sentence or rule of transportation, or here-

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(a) Entitled, "*An act for the employing at hard labour, persons sentenced to be transported.*"

after to be under such sentence or rule, or pardoned, or to be pardoned on condition of transportation, to be confined in any such penitentiary house, for any term not exceeding the term for which such person shall be, at the time of signing such warrant, under rule to be transported, there to be kept at labour or employment, in such manner as the keeper of such house shall think most suited, to render such persons industrious and useful members of society. 32 G. 3, c. 27.

2. Provided always, that it shall and may be lawful to and for the lord lieutenant or other chief governor, at any time, by warrant under his hand, to order any persons confined as aforesaid in any such penitentiary house, to be removed from thence to the common gaol, and to be transported for the residue of the term of transportation, according to the sentence or rule against him, as if he had never been committed to the penitentiary house. Lord lieutenant may order such persons to be removed to gaol, and transported.

51 Geo. 3, c. 63(a), s. 2. That where any person shall at any session of oyer and terminer or gaol delivery, or at any quarter or other general sessions of the peace for any county, city, town, or place in that part of the united kingdom called Ireland, be lawfully convicted of any crime for which he or she shall be liable by law to transportation, it shall be lawful for the court before which such offender shall be so convicted, or any court held for the same place, and with like authority, if such court shall think fit, in the place of such punishment by transportation, to order and adjudge that such person shall be sent to some house of correction or penitentiary within the said county, city, town or place, to be appointed in and by such order, there to be kept to hard labour, for such time or for such term or number of years as such court shall appoint; provided that the same shall in no case be more than seven years. Provided always, that it shall be lawful for the court before which any offender or offenders shall be so convicted, to order such offender to be whipped or imprisoned for any time less than one year, or to suffer such other corporal punishment as such offenders are liable to, and as may be inflicted on such offenders by law; any thing herein contained to the contrary notwithstanding. Crimes punishable by transportation, may be punished by confinement in some house of correction.

3. That when any offenders shall be ordered to be kept to hard labour in manner aforesaid, the clerk of the peace, or other clerk of the court, by whom such order shall be made, shall give to the sheriff or gaoler having the custody of such offender, a certificate in writing under his hand, containing an In which case the clerk of the court shall certify all particulars to the gaoler or sheriff,

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(a) Entitled "*An act to authorize the punishment, by confinement and hard labour, of persons in Ireland liable to transportation; and to repeal so much of a former act as relates to that subject.*"

51 G. 3, c. 63.

who shall deliver the prisoner and such certificate to the keeper of the house of correction.

Expences of conveyance shall be paid by the treasurer of the county.

Offenders so confined, to be kept separate from minor offenders.

Returns of offenders shall be made to judges of assize and justices at sessions.

account of the christian name, surname, and age of such offender, of his or her offence, of the court before whom he or she was convicted, and of the term for which he or she shall have been so ordered to hard labour; and the sheriff or gaoler shall, with all convenient speed after the making of any such order, and receiving of such certificate, convey such offender, or cause him or her to be conveyed to the proper house of correction or penitentiary, and deliver such offender, or cause him or her to be delivered, together with the said certificate, into the custody of the master or keeper of such house of correction; and the person and persons to whom such offender shall be so delivered, shall give a proper receipt in writing under his or their hand or hands, which shall be a sufficient discharge to the sheriff, gaoler, or other person so delivering any such offender.

4. That all expences incurred by any sheriff or gaoler, in the conveyance of any such offender as aforesaid, shall be paid by the county, city, town, or place for which the court ordering such punishment by hard labour instead of transportation shall be held; and the sheriff or gaoler shall receive the money due for such expences from the treasurer of such county, city, town, or place, by order of the justices of the peace thereof, at their quarterly or other general sessions, who are hereby required to make such order accordingly; and the same shall be presented by the grand jury of such county, city, or town, at the next assizes or presenting term therein.

9. Provided always, and be it further enacted, that the offender or offenders, who shall by virtue of this act be directed to be confined and kept to hard labour, shall in such house of correction be kept separate from, and shall not be permitted or suffered to intermix with any person or persons confined for any offence not making the person or persons having committed the same subject to a sentence of transportation.

10. That the overseers or keepers of the several houses of correction or penitentiaries, in which any prisoner so sentenced to hard labour shall be confined, shall from time to time make returns, specifying the names of all and every the person or persons who shall be so committed to their custody, the offences of which they shall have been guilty, the court before which each person was convicted, the sentence of the court, the age, bodily state, and behaviour of every such convict while in custody, and also the names of all and every the person or persons who shall have died under such custody, or shall have escaped from such place of confinement, or shall have been released from thence, (specifying the mode of such release), such returns to be made to the justices of assize at each assizes, and to the justices of peace at each quarter, or

other general session of the peace for the county, city, or place within which such place of confinement shall be situate; and that every such return shall be verified on the oath of the person making the same, such oath to be made before the court into which the return shall be delivered. 51 G. 3, c. 63

11. That every offender who shall be delivered to be kept to hard labour in manner aforesaid, shall, at the end of the term of such service, and upon being restored to liberty, receive from the keeper of such house of correction such sum of money, not being less than forty shillings nor more than five pounds, together with such decent clothing as the court into which such return shall be made as aforesaid shall appoint. And if any such offender, whilst confined to hard labour in manner aforesaid, shall, by industry and other good behaviour, shew such signs of reformation as shall induce the said court to recommend him as an object of mercy to the lord lieutenant or other chief governor or governors of Ireland for the time being; and it shall be thereupon signified by a letter from such secretary to the keeper of such house of correction or penitentiary, that the lord lieutenant or other chief governor or governors of Ireland for the time, thinks or think fit, in consideration of such good behaviour, to shorten the duration of such offender's term, such offender shall be accordingly set at liberty at the time mentioned in such letter, and shall receive a sum of money from such keeper, and clothing, in the same manner as if he or she had served the whole of the term for which he or she was adjudged to serve.

Offenders on being restored to liberty shall receive money and clothes.

The time of confinement may be shortened.

12. That such keeper shall receive such sum of money, and the reasonable price of such clothing so given by him as aforesaid, from the treasurer of the county, city, or town, by order of the justices of the peace thereof, at their quarterly or other general sessions, who are hereby required to make such order accordingly; and the same shall be presented by the grand jury of such county, city, or town, at the next assizes or presenting term.

The expences of allowance and clothing shall be paid by the county treasurer.

15. Provided always, and be it enacted, that it shall be lawful to and for the lord lieutenant or other chief governor or governors of Ireland for the time being, to order that any such offender be removed to any other house of correction or penitentiary in Ireland, and there kept to hard labour, for any term not exceeding the term of confinement which shall then remain unexpired, under the order by virtue of which such offender shall be then so confined; and also to order, at any time during the said term, that such offender shall be sent back to such former house of correction or penitentiary for the residue of such time, any thing in this or any other act to the contrary notwithstanding.

Offenders may be removed from one house of correction to another.

44 Geo. 3, c. 13, s. 1. Any petty officer or seaman belonging to the navy, when arrested and taken out of the service, upon

**44 G. 3, c. 13.** *civil process or any criminal charge, shall not be let out on bail; or set at liberty, on being discharged therefrom, either by failure of prosecution or endurance of punishment; but shall be handed over by the officer in whose custody he may be, to the nearest commissioned officer of the navy employed in raising men for the sea service.]*

2. *[Whenever any such petty officer or seaman shall be removed by habeas corpus or otherwise, from the custody of any sheriff or other officer to that of another, the fact of his being such petty officer or seaman shall be endorsed on the writ.]*

3. *[Sheriffs, gaolers, &c. neglecting to convey such petty officers and seamen after the rate of forty miles per diem, liable to an action of trespass on the case at their suit.]*

4. *[Sheriffs, &c. not safely conducting such, or suffering them to escape, forfeit £100.]*

Persons indicted, and acquitted on account of insanity at the time of the offence may be detained.

1 & 2 Geo. 4, c. 33(a), s. 16. And whereas persons charged with offences in Ireland may have been or may be of unsound mind at the time of committing the offence where-with they may have been or shall be charged, and by reason of such insanity, may have been or may be found not guilty of such offences; and it may be dangerous to permit persons in such cases to go at large; be it therefore enacted, that in all cases where it shall be given in evidence on the trial of any person in Ireland, charged with treason, murder, or any other offence, that such person was insane at the time of the commission of such offence, and such person shall be acquitted; the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the court before whom the trial shall be had, shall, if it shall be thought necessary or proper, order such person to be kept in strict custody, in such place, and in such manner as to the court shall seem fit, until the pleasure of the lord lieutenant, or other chief governor or governors of Ireland for the time being, shall be known; and it shall thereupon be lawful for the lord lieutenant, or other chief governor or governors of Ireland for the time being, to give such order for the safe custody and care of such person, during the pleasure of the lord lieutenant or other chief governor or governors of Ireland for the time being, in such place, and in such manner as shall seem fit; and in all cases where any person, before the passing of this act, has been acquitted of any such offences on the

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(a) Entitled, "An act to make more effectual provision for the establishment of asylums for the lunatic poor, and for the custody of insane persons charged with offences in Ireland."

ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person, by order of the court before whom such person has been tried or otherwise, and shall remain in custody at the time of the passing of this act, it shall be lawful for the lord lieutenant, or other chief governor or governors of Ireland for the time being, to give the like order for the safe custody and care of such person, as the lord lieutenant, or other chief governor or governors of Ireland, is or are by this act enabled to give, in the cases of persons who shall hereafter be acquitted on the ground of insanity.

1 & 2 G. 4, c.  
33.

17. That if any person indicted in Ireland for any offence, shall be found to be insane, by a jury lawfully empannelled for that purpose, so that such person cannot be tried upon such indictment; or if, upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the court before whom such person shall be brought to be tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody, and to be taken care of, until the pleasure of the lord lieutenant, or other chief governor or governors of Ireland for the time being, shall be known; and if any person charged with any offence, shall be brought before any court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be impannelled to try the sanity of such person; and if the jury so impannelled shall find such person to be insane, it shall be lawful for such court to order such person to be kept in strict custody, in such place and in such manner as to such court shall seem fit, until the pleasure of the lord lieutenant, or other chief governor or governors of Ireland for the time being, shall be known; and in all cases of insanity so found, it shall be lawful for the lord lieutenant, or other chief governor or governors of Ireland for the time being, to give the like order for the safe custody and care of such person so found to be insane, as the lord lieutenant, or other chief governor or governors of Ireland, is or are by this act enabled to give, in the cases of persons acquitted on the ground of insanity.

Persons found to be insane at the time of trial, or when brought up to be discharged, may be detained.

18. Provided always, and be it enacted, that whenever and as soon as there shall be a lunatic asylum built or maintained, either wholly or in part, in any county, county of a city, or county of a town, wherein such prisoner, in any of the cases aforesaid, shall be tried or found insane as aforesaid, then and from thenceforth, such insane person shall, without delay, be removed to such asylum, and shall be kept therein so long as such prisoner shall be detained in custody.

Insane criminals shall be removed to county lunatic asylums.

## SECTION 3.

*Of Pardon.*

Harbourer of felon, prosecuting others to conviction shall be pardoned.

4 *Anne*, c. 11, s. 6, (*pars.*)—That if any harbourer of any felon, shall discover and prosecute any two or more such harbourers, so as they shall be taken, and shall be convict of harbouring as aforesaid at the prosecution of such discoverer, that then such harbourer, so discovering and prosecuting, shall by virtue of this act be pardoned and acquitted for his former crimes of harbouring only, any thing in this act to the contrary notwithstanding.

Effect of a free or conditional pardon to a convict.

9 *Geo.* 4, c. 54, s. 33.—And be it declared and enacted, that where the royal mercy shall be extended to any offender convicted of any felony punishable with death or otherwise, and either a free pardon or a conditional pardon shall, by warrant in due form, be granted to such offender, the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender as to the felony for which such pardon shall be so granted. Provided always, that no free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any felony, committed after the granting of any such pardon.

Proviso for subsequent conviction.

## ADDENDA.

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7 *Will. 4, c. 2(a), s. 2.*—‘ And whereas doubts have arisen how far the county of Dublin, and the county of the city of Dublin are within the operation of the said act, and it is expedient to remove such doubts; be it therefore and it is hereby declared and enacted, that the said act shall not be construed to affect or extend to the said counties, or either of them, save and except only in so far as provision is by the said act made requiring the grand juries of such counties to transact their fiscal business in open court, and for the more speedy and effectual repair by the commissioners for the extension and promotion of public works in Ireland, upon the application of his majesty’s postmaster-general, of roads upon which his majesty’s mails are carried, which provision shall remain in full force and effect. How far the grand jury act shall extend to the county and city of Dublin.

6. That it shall and may be lawful for any two magistrates, who, in the absence of the coroner of any county, may have held any inquest relative to the death of any person, and before whom any physician, surgeon, apothecary, chemist, or other person practising medicine or surgery shall, in obedience to a summons from such magistrates, attend and be examined as a witness at such inquest, to grant such witness an order, signed by such magistrates, upon the treasurer of the county wherein such inquest shall be held, for such sum not exceeding three pounds, as to such magistrates shall seem fit; and the amount of all such payments shall be presented in the same manner as any sums which coroners are by the said recited act authorized to grant to medical witnesses; provided that such magistrates shall certify, as the coroner is directed, the amount and particulars of all such sums to the presentment sessions, and that such payment shall have been approved thereat. Two magistrates holding inquests, may grant remuneration to medical witnesses.

9. That the sheriff of each county in Ireland, in which there are not ten baronies or half baronies, shall, in framing the panel of persons summoned to serve on the grand jury of One £50 freeholder, or £100 lease.

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(a) Entitled, “ *An act to amend an act passed in the seventh year of his present majesty, for consolidating and amending the laws relating to the presentment of public money by grand juries in Ireland.*”



7 W. 4, c. 2.

holder from  
each barony  
to be placed  
first on the  
grand jury, in  
counties hav-  
ing less than  
ten baronies

such county at each assizes, after the passing of this act, observe the rule herein-after following; (that is to say,) he shall first place on such panel for each barony or half barony in such county, the name of some person having in such barony or half barony, freehold lands of the yearly value of fifty pounds and upwards, or leasehold lands of the yearly value of one hundred pounds over and above the amount of rent payable out of or for such leasehold lands, so that, as far as can be, one fit and competent person, having lands of the value aforesaid, and resident in each barony, if the same can be found therein respectively, shall be placed upon such panel; and having in such manner selected such one fit and proper person for each barony and half barony, the sheriff shall complete the said panel as now by law authorized and directed, and the persons taken from the panel so framed shall be and constitute the grand jury or inquest of such county; any thing in any writ, precept, or venire facias expressed or directed, or any law, statute, usage, or custom to the contrary notwithstanding, and as if such grand jury were altogether composed of freeholders; provided always, that no presentment or indictment made or found by any grand jury shall be liable to be traversed, quashed, or in any manner impeached by reason of the grand jury not being selected as aforesaid; but any sheriff of such county who shall wilfully omit or neglect to follow the rule hereby made for the selection of the grand jury shall be liable, on a complaint made to the judge of assize, to be fined such sum as to such judge shall seem proper.

[*The following important enactments have been omitted in their proper places.*]

Insert at page 359, line 6 from bottom.

9 Geo. 4, c. 54, s. 20. That whenever sentence shall be passed for felony, on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence, either of imprisonment or of transportation, the court, if empowered to pass sentence of transportation, may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment or transportation to which such person shall have been previously sentenced, although the aggregate term of imprisonment or transportation respectively, may exceed the term for which either of those punishments could be otherwise awarded.

On conviction of felony, after sentence for a former crime, the court may pass a sentence, to commence at the end of the first.

Insert at page 564, line 9 from bottom.

9 Geo. 4, c. 54, s. 29. That in any indictment or information for any felony or misdemeanor committed in, or upon, or with respect to any church, chapel, or place of religious worship, or to any bridge, court, court house, sessions house, gaol, house of correction, infirmary, asylum, or other public building, erected or maintained in whole or in part at the expense of any county, county of a city, or county of a town, or on or with respect to any goods or chattels whatsoever, provided for or at the expense of any county, county of a city, or county of a town, to be used for making, altering, or repairing any bridge or highway, or any court or other such building as aforesaid, or to be used in or with any such court or other building, it shall not be necessary to state such church, chapel, or place of religious worship, or such bridge, court, court house, sessions house, gaol, house of correction, infirmary, asylum, or other building, or any such goods or chattels to be the property of any person.

In indictments for offences relating to public buildings, property need not be laid in any person.

Insert at page 40, line 27.

9 Geo. 4, c. 56, s. 12. That if any person shall unlawfully and maliciously break down or cut down any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, whereby any lands shall be overflowed or damaged, or shall be in danger of being so; or shall unlawfully and maliciously throw down, level, undermine, or otherwise destroy any lock, sluice, weir, tunnel, towing path, floodgate, aqueduct, reservoir, cut, dam, drain, watercourse, or other work on any navigable river

Destroying any sea bank, or works on any river or canal, so as to injure land; felony.

9 G. 4, c. 56. or canal; every such person shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

Removing  
the piles of  
any sea bank  
&c., so as to  
obstruct the  
navigation of  
any river &c.;  
felony.

13. That if any person shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, or shall unlawfully and maliciously open or draw up any floodgate, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof; every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice, publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

Injuring pub-  
lic bridges;  
felony.

14. That if any person shall unlawfully and maliciously pull down, or in anywise destroy any public bridge, or do any injury, with intent and so as thereby to render such bridge or any part thereof dangerous or impassable; every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

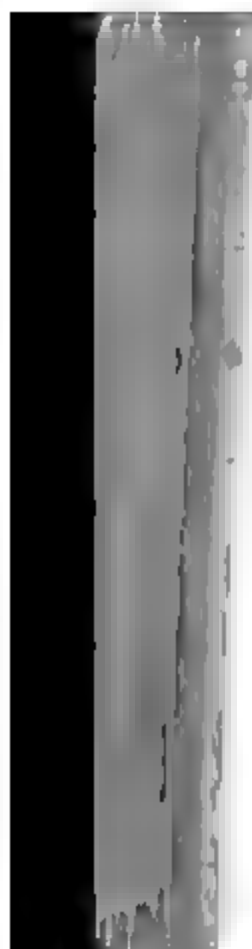
Destroying  
turnpike  
gate, toll-  
house &c.

15. That if any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, set up or erected to prevent passengers passing by, without paying any toll directed to be paid by any act or acts of parliament relating thereto, or any house, building, or weighing engine, erected for the better collection, ascertainment, or security of any such toll; every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

## CORRIGENDA.

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- Page 78, line 38, For "2 & 3 Will. 4, c. 77," read "5 & 6 Will. 4, c. 27;" and for the title of that act, read, "*An act to continue and amend certain regulations for the linen and hempen manufactures in Ireland.*" In the same note, for "Aug. 1832," read "Sept. 1835."
- Page 117, last line, For "under the repealed statute, 6 Ann, c. 6, s. 4," read "at common law."
- Page 159. 15 & 16 Geo. 3, c. 21, ss. 8, 9, 10, 11, 12, 13, 18.  
Note. These sections have been virtually repealed, as to all Ireland save the county and city of Dublin, by the 6 & 7 Will. 4, c. 116, s. 1.
- Page 149, For "SECTION 3," read "SECTION 2."
- Page 185, For "SECTION 4," read "SECTION 5."
- Pages 191—198, Cancel the statutes 23 & 24 Geo. 3, c. 28 and 55 Geo. 3, c. 80, both having been repealed by the 6 & 7 Will. 4, c. 76, s. 32.
- Page 212, Number as "7," the section commencing "[upon receipt of &c.]"
- Page 249. Sec. 3. Add a reference to the 36 Geo. 3, c. 7, s. 1, which contains very similar provisions.
- Page 253, Marginal note, For "55 G. 3, c. 103," read "5 G. 4, c. 20."
- Page 287, *Dele* the upper marginal note, commencing, "Conviction to be &c."
- Page 298, Cancel the last five lines.
- Page 372, line 20, Add a reference to "*R. v. Jones*, 1 B. & Ald. 209; *R. v. Booker*, 2 Dowl. Pr. C. 446.
- Page 403, At the end of sec. 99, add a reference to 7 Will. 4, c. 2, s. 6, p. 643.
- Page 421, line 4 of note *b*, Fill up the reference by inserting "81, 410."
- Page 442, line 6, Add "but see 6 & 7 Will. 4, c. 114, s. 2, post. 611."
- Page 451, line 10, After "Prosecution" add "or attachment, *R. v. Johnson*, Ir. T. R. 200."
- Page 464, line 9, For "*ante*" read "s. 2."
- Page 529, line 14, Fill up the reference by inserting "596." At the end of the note, add a reference to the Addenda p. 643.
- Page 530, At the end of sec. 30, add a reference to the 7 Will. 4, c. 2, s. 9, Add. p. 643.



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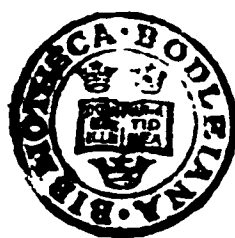
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THE END.



coverable; or he shall, except in those cases in which the said newspaper or cover shall only have marks thereon, and not writing, at the option of the postmaster general, be prosecuted as for a misdemeanor, and shall suffer punishment accordingly. 7 Will. 4, & 1 Vict. c. 36.

19. That every constable, or other peace-officer, who shall refuse or neglect to serve a summons or execute a warrant or order granted, issued, or made by a justice of the peace, pursuant to the post office acts, shall forfeit ten pounds. Constable not serving summons, &c.

25. That every person employed by or under the post office, who shall, contrary to his duty, open, or procure or suffer to be opened a post letter, or shall wilfully detain or delay, or procure or suffer to be detained or delayed, a post letter, shall in England and Ireland be guilty of misdemeanor, and in Scotland of a crime and offence, and, being convicted thereof, shall suffer such punishment by fine or imprisonment, or by both, as to the court shall seem meet: Provided always, that nothing herein contained shall extend to the opening, or detaining, or delaying of a post letter, returned for want of a true direction, or of a post letter returned by reason that the person to whom the same shall be directed is dead, or cannot be found, or shall have refused the same, or shall have refused or neglected to pay the postage thereof; nor to the opening, or detaining, or delaying of a post letter, in obedience to an express warrant in writing, under the hand (in Great Britain) of one of the principal secretaries of state, and in Ireland under the hand and seal of the lord lieutenant of Ireland. Opening or delaying post letters. Proviso.

26. That every person employed under the post office, who shall steal, or shall, for any purpose whatever, embezzle, secrete, or destroy a post letter, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and shall, at the discretion of the court, either be transported beyond the seas for the term of seven years, or be imprisoned for any term not exceeding three years; and if any such post letter, so stolen or embezzled, secreted or destroyed, shall contain therein any chattel or money whatsoever, or any valuable security, every such offender shall be transported beyond the seas for life. Embezzlement, &c. of any letter or packet; felony.

27. That every person who shall steal from or out of a post letter, any chattel, or money, or valuable security, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and shall be transported beyond the seas for life. Stealing from or out of letters; felony.

28. That every person who shall steal a post letter bag, or a post letter from a post letter bag, or shall steal a post letter from a post office, or from an officer of the post office, or from a mail, or shall stop a mail, with intent to rob or search the same, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and shall be transported beyond the seas for life. Stealing post letter bags or post letters sent by mail; felony.

7 Will. 4, & 1  
Vict. c. 25.

2. [*The lord lieutenant and council may increase the district, by adding to it any parish or place in the county or city of Dublin, of which any part shall be in the schedule limits.*]

3. [*Misnomers and misdescriptions in the schedule or order in council, shall not affect the execution of the Act.*]

13. [*The new police district may be divided by the lord lieutenant into any number of divisions, not exceeding four. He may establish one public office in each division; and attach thereto any number of justices, not exceeding three, nor less than two.*]

16. [*The lord lieutenant may fix the hours of attendance of the justices at the police offices; and may require the occasional attendance of a justice, at any other than his own office.*]

Divisional  
justices not to  
serve on ju-  
ries in Dub-  
lin.

20. That the justices appointed and acting under the [48 Geo. 3, c. 140] or under any act passed or to be passed for the regulation of the police district of Dublin Metropolis, shall be, and are hereby exempted and disqualified from being returned or serving on any juries or inquests whatsoever, in the county or the county of the city of Dublin.

CAP. 36 (a), s. 1, [*Enacts that this act shall commence at the same time with c. 32, intituled "An act to repeal the several laws relating to the Post Office," viz., 1 August, 1837.*]

Penalty on  
abuse of pri-  
vilege as to  
newspapers.

5. And for the prevention of the abuse of the privilege of sending newspapers free by the post, or at a reduced rate, be it enacted, that every person who shall enclose, or cause or procure to be inclosed in a newspaper to be sent by the post, or under the cover thereof, any letter or paper or thing, and every person who shall print, or cause to be printed any words or communication, either upon any such newspaper after the same shall have been published, or upon the cover thereof, or who shall put or cause to be put any writing or marks, either upon the newspaper or upon the cover thereof, other than the name and address of the person to whom it shall be sent, and every person who shall knowingly either send or cause to be sent by the post, or who shall either deliver or tender in order to be sent by the post, a newspaper in respect of which any one of the offences herein-before mentioned shall have been committed, shall, for every such offence, forfeit treble the duty of postage, computed by weight and by distance, as if the paper in respect of which the offence was committed were a letter, such postage to be recoverable as postages not exceeding in amount twenty pounds are re-

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(a) Entitled "*An act for consolidating the laws relative to offences against the post office of the united kingdom; and for regulating the judicial administration of the post office laws, and for explaining certain terms and expressions employed in those laws.*"

each punishment, by fine or imprisonment, or by both, as to the court shall seem meet. 7 Will. 4, & 1 Vict. c. 36.

33. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, the name or handwriting of the Receiver general for the time being of the general post office in England or Ireland, or of any person employed by or under him, in any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining of any money in the hands or custody of the governor and company of the bank of England or Ireland, on account of the Receiver general of the post office; or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any draft, warrant, or order of such Receiver general, or of any person employed by or under him, for money, or for payment of money, with intent to defraud any person whomsoever, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas for life.

Forging the handwriting of the Receiver general in England or Ireland; felony.

34. And in order to prevent the imitation and forgery of lawful franks, be it further enacted, that every person who shall forge or counterfeit the handwriting of another person, in the superscription of a post letter, or who shall alter or change upon a post letter the superscription thereof, or who shall write, or send by the post, or cause to be written or sent by the post, a letter, the superscription whereof, in whole or in part, shall be forged or counterfeited or altered, knowing the same to be forged, counterfeited, or altered, with intent, in either of those cases, to avoid the payment of the duty of postage, shall, in England and Ireland, be guilty of felony, and in Scotland, of a high crime and offence, and being convicted thereof, shall be transported beyond the seas for the term of seven years.

Forging or altering franks; felony.

35. That in the case of every felony punishable under the post office acts, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by the post office acts punishable; and every accessory after the fact to any felony punishable under the post office acts (except only a receiver of any property or thing stolen, taken, embezzled, or secreted,) shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under the post office acts shall be liable to be indicted and punished as a principal offender.

Principal in the second degree, accessories, &c., how to be punished.

36. That every person who shall solicit or endeavour to procure any other person to commit a felony or misdemeanor punishable by the post office acts, shall, in England and Ire-

Soliciting the commission of any offence.

7 Will. 4, & 1  
 Vict. c. 36.

land, be guilty of a misdemeanor, and in Scotland, of a crime and offence, and being thereof convicted, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years.

Venue.

37. And for the more effectual prosecution of offences committed against the post office acts, be it enacted, that the offence of every offender against the post office acts may be dealt with, and indicted and tried, and punished, and laid and charged to have been committed, in England and Ireland, either in the county or place where the offence shall be committed, or in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place; and if committed in Scotland, either in the high court of justiciary at Edinburgh, or in the circuit court of justiciary to be holden by the lords commissioners of justiciary within the district where such offence shall be committed, or in any county or place within which such offender shall be apprehended or be in custody, as if his offence had been actually committed there: and where an offence shall be committed in or upon or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter bag or post letter, or in respect of a post letter bag or post letter, or a chattel, or money, or valuable security sent by the post, such offence may be dealt with and inquired of, and tried and punished, and laid and charged to have been committed, as well in any county or place in which the offender shall be apprehended or be in custody, as also in any county or place through any part whereof the mail, or the person, or the post letter bag, or the post letter, or the chattel, or the money, or the valuable security sent by the post, in respect of which the offence shall have been committed, shall have passed in due course of conveyance or delivery by the post, in the same manner as if it had been actually committed in such county or place; and in all cases where the side, or the centre, or other part of a highway, or the side, the bank, the centre, or other part of a river, or canal or navigation, shall constitute the boundary of two counties, such offence may be dealt with and inquired of, and tried and punished, and laid and charged to have been committed in either of the said counties through which or adjoining to which, or by the boundary of any part of which, the mail or person shall have passed in due course of conveyance or delivery by the post, in the same manner as if it had actually been committed in such county or place; and every accessory before or after the fact to any such offence, if the same be a felony or a high crime, and every person aiding or abetting, or counselling or procuring the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished as if he were a principal, and his offence laid and charged to have been committed in

Accessories  
 &c. may be  
 dealt with as  
 principals.

any county or place in which the principal offender may be tried. 7 Will. 4, & 1 Vict. c. 36.

39. That where an offence punishable under the post office acts shall be committed within the jurisdiction of the admiralty, the same shall be dealt with and inquired of, and tried, and determined in the same manner as any other offence committed within that jurisdiction.

Admiralty jurisdiction.

40. That in every case, where an offence shall be committed in respect of a post letter bag, or a post letter, or a chattel, money, or a valuable security sent by the post, it shall be lawful to lay in the indictment or criminal letters to be preferred against the offender, the property of the post letter bag, or of the post letter, or chattel, or money, or the valuable security sent by the post, in the postmaster general; and it shall not be necessary in the indictment or criminal letters to allege or to prove upon the trial, or otherwise, that the post letter bag, or any such post letter, or valuable security was of any value; and in any indictment, or in any criminal letters to be preferred against any person employed under the post office, for any offence committed against the post office acts, it shall be lawful to state and allege that such offender was employed under the post office of the united kingdom at the time of the committing of such offence, without stating further the nature or particulars of his employment.

Property to be laid in the postmaster general

41. That every person convicted of any offence for which the punishment of transportation for life is herein awarded, shall be liable to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and every person convicted of any offence punishable according to the post office acts by transportation for fourteen years, shall be liable to be transported for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned for any term not exceeding three years.

Punishments.

42. That where a person shall be convicted of an offence punishable under the post office acts, for which imprisonment may be awarded, the court may sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, and may also direct that he shall be kept in solitary confinement for the whole or any portion of such imprisonment, as to the court shall seem meet.

Power to award hard labour or solitary confinement.

47. And for the interpretation of the post office laws, be it enacted, that the following terms and expressions shall have the several interpretations herein-after respectively set forth, unless such interpretations are repugnant to the subject, or inconsistent with the context of the provisions in which they may be found; (that is to say,) the term "convention posts" shall mean posts established by the postmaster general, under agreements with the inhabitants of any places; and the term "double letter" shall mean a letter

Interpretation clause.



7 WILL. 4, & 1  
 Vict. c. 36.

having one enclosure; and the term "double postage" shall mean twice the amount of single postage; \* \* \* \* and the term "letter" shall include packet, and the term "packet" shall include letter; and the expression "lord lieutenant of Ireland" shall mean the chief governor or governors of Ireland, for the time being; and the expression "lords of the treasury" shall mean the lord high treasurer of the united kingdom of Great Britain and Ireland, or the lords commissioners of her majesty's treasury of the united kingdom of Great Britain and Ireland, or any three or more of them; and the term "mail" shall include every conveyance by which post letters are carried, whether it be a coach, or cart, or horse, or any other conveyance, and also a person employed in conveying or delivering post letters, and also every vessel which is included in the term packet boat; and the term "mail bag" shall mean a mail of letters, or a box, or a parcel, or any other envelope in which post letters are conveyed, whether it does or does not contain post letters; and the term "master of a vessel" shall include any person in charge of a vessel, whether commander, mate, or other person, and whether the vessel be a ship of war, or other vessel; and the expression "officer of the post office" shall include the postmaster general, and every deputy postmaster, agent, officer, clerk, letter carrier, guard, post boy, rider, or any other person employed in any business of the post office, whether employed by the postmaster general, or by any person under him, or on behalf of the post office; \* \* \* \* and the expression "persons employed by or under the post office" shall include every person employed in any business of the post office, according to the interpretation given to officer of the post office; \* \* \* \* and the term "postage" shall mean the duty chargeable for the transmission of post letters; and the term "post town" shall mean a town where a post office is established (not being a penny, or twopenny, or convention post office); and the term "post letter bag" shall include a mail bag, or box, or packet, or parcel, or other envelope or covering in which post letters are conveyed, whether it does or does not contain post letters; and the term "post letter" shall mean any letter or packet transmitted by the post, under the authority of the postmaster general; and a letter shall be deemed a post letter from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed; and the delivery to a letter carrier or other person authorised to receive letters for the post, shall be a delivery to the post office; and a delivery at the house or office of the person to whom the letter is addressed, or to him, or to his servant or agent, or other person considered to be authorised to receive the letter according to the usual manner of delivering that person's letters, shall be a delivery to the person addressed; and the

term "post office" shall mean any house, building, room, or place where post letters are received or delivered, or in which they are sorted, made up, or despatched; and the term "postmaster general" shall mean any person or body of persons executing the office of postmaster general for the time being, having been duly appointed to the office by her majesty; and the terms "post office acts," and "post office laws," shall mean all acts relating to the management of the post, or to the establishment of the post office, or to postage duties, from time to time in force; and the term "ships" shall include vessels other than packet boats; and the term "single postage" shall mean the postage chargeable for a single letter; and the term "single letter" shall mean a letter consisting of one sheet or piece of paper, and under the weight of an ounce; and the term "sea-postage" shall mean the duty chargeable for the conveyance of letters by sea, by vessels not packet boats; and the term "ship letter" shall mean a letter transmitted inwards or outwards over seas, by a vessel not being a packet boat; and the term "treble letter" shall mean a letter consisting of more than two sheets or pieces of paper, whatever the number, under the weight of an ounce; and the term "treble postage" shall mean three times the amount of single postage; and the term "treble the duty of postage" shall mean three times the amount of the postage to which the letter to be charged would otherwise have been liable, according to the rates of postage chargeable on letters; and the term "united kingdom" shall mean the united kingdom of Great Britain and Ireland; and the term "valuable security" shall include the whole or any part of any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate, to any share or interest in any public stock or fund, whether of this kingdom or of Great Britain, or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, or to any deposit in any savings bank, or the whole or any part of any debenture, deed, bond, bill, note, warrant, or order, or other security whatsoever for money, or for payment of money, whether of this kingdom, or of any foreign state, or of any warrant or order for the delivery or transfer of any goods or valuable thing; and the term "vessel" shall include any ship or other vessel, not a post office packet; and whenever the term "between" is used in reference to the transmission of letters, newspapers, parliamentary proceedings, or other things between one place and another, it shall apply equally to the transmission from either place to the other; and every officer mentioned shall mean the person, for the time being, executing the functions of that officer; and whenever in this act, or the schedules thereto, with reference to any person, or matter, or thing, or to any persons, matters, or things, the singular or plural number, or the masculine gender only is

7 Will. 4, & 1 Viet. c. 36.

7 Wm. 4, & 1  
 Vict. c. 38.

expressed, such expression shall be understood to include several persons, or matters, or things, as well as one person, a matter, or thing, and one person, matter, or thing, as well as several persons, or matters, or things, females as well as males, bodies politic or corporate, as well as individuals, unless it is otherwise specially provided, or the subject or context be repugnant to such construction.

Costs to  
 witnesses, on  
 indictments  
 for concealing  
 the birth of  
 any child.

CAP. 44 (a), s. 1.—[Recites the 9 Geo. 4, c. 31, Eng. & 14, to which the 10 Geo. 4, c. 34, Ir. s. 17, (*Hayes, C.P. 87*), corresponds.]  
 “And whereas no provision is made by law for payment of the costs of prosecutions for such misdemeanors; Be it therefore &c., that where any prosecutor or other person shall appear before any court, on recognizance or subpoena, to prosecute or give evidence against any person upon any charge of having so endeavoured to conceal the birth of any child, every such court is hereby authorised and empowered, whether any bill of indictment for such charge shall or shall not be actually preferred, to order payment of the costs and expenses of the prosecutor and witnesses for the prosecution, together with a compensation for their trouble and loss of time, in the same manner as courts are now by law authorised and empowered to order the same in cases of prosecutions for felony.

Orders for  
 payment of  
 money in such  
 cases to be the  
 same as in  
 cases of  
 felony.

2. That every order for the payment of any money by virtue of this act shall be made out and delivered by the proper officer of the court unto such prosecutor or other person, upon the same terms, and in the same manner in all respects, as orders for the payment of costs are now made in cases of felony; and the treasurer or other person, when any such order shall be made, shall be, and he is hereby required, upon sight of such order, forthwith to pay to the person therein named, or to any one duly authorized in that behalf, the money in such order mentioned; and such treasurer or other person shall be allowed the same in passing his accounts.

CAP. 48 (b), s. 1. [Recites the 6 & 7 Will. 4, c. 14; and empowers the lord lieutenant to appoint a barrister of ten years' standing to be a second commissioner of bankrupt, who shall hold office during good behaviour.]

Taking un-  
 lawful fees,  
 &c.

11. That if any person shall take any fee, emolument, gratuity, sum of money, or thing of value, contrary to the provisions of the said recited act, such person so offending shall be subject and liable to all the penalties and forfeitures enacted by the same act, and may be prosecuted either by information at

(a) Entitled “An act to provide for the costs of prosecutions for concealing the birth of children, by secret burying or otherwise disposing of their dead bodies.”

(b) Entitled “An act to appoint a second commissioner of bankrupt in Ireland; and to amend an act passed in the sixth and seventh years of the reign of his late Majesty King William the Fourth, entitled—“An act to amend the laws relating to bankrupts in Ireland.”

the suit of her majesty's attorney-general, or by criminal information before her majesty's court of Queen's Bench, or by indictment. 7 Will. 4, & 1 Vict. c. 48.

12. That no person who, under the provisions of the said recited act and of this act, shall be punished or liable to be punished by imprisonment, for riot or disturbance in any court held by any commissioner or commissioners of bankrupt, or for interrupting in any such court the commissioner in the exercise of his duty, shall be prosecuted for such offence or offences by information at the suit of her majesty's attorney general, or by criminal information before her majesty's court of Queen's Bench, or by indictment; any thing in the said recited acts to the contrary notwithstanding. Persons imprisoned for riots &c. in court not, to be prosecuted by indictment.

CAP. 54 (a), s. 83.—[Enacts (*inter alia*), that persons guilty of giving false testimony as therein mentioned, shall be punishable as for perjury.]

CAP. 84 (b), s. 1.—[Recites 11 Geo. 4, & 1 Will. 4, c. 66, Eng.; 2 & 3 Will. 4, c. 59, s. 19; 2 & 3 Will. 4, c. 123, ss. 1 & 2, (*Hayes, Cr. & Pun.* 79,) 2 & 3 Will. 4, c. 125; 5 & 6 Will. 4, cc. 45 & 51.]—"And whereas it is expedient that none of the herein-before mentioned offences should henceforth be punishable with death:" Be it therefore &c., that if any person shall, after the commencement of this act, be convicted of any of the offences herein-before mentioned, such person shall not suffer death, or have sentence of death awarded against him or her for the same, but shall be liable, at the discretion of the court, to be transported beyond seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, nor less than two years. Persons convicted of any of the offences herein referred to, to be transported.

2. "And whereas, by the said recited act, [2 & 3, Will. 4, c. 123,] persons convicted of the forgeries and other offences connected therewith, therein respectively referred to, are liable to be transported beyond the seas for life:—[Recites also the 3 & 4 Will. 4, c. 51, s. 27, (*Hayes, Cr. & Pun.* 215,) and 3 & 4 Will. 4, c. 44, s. 3. (*Hayes, Cr. & Pun.* 4, 35 a, 80).]—And whereas it is expedient to repeal the said three lastly herein-before in part recited acts, so far as relates to the punishment of persons liable to be transported for life, in order that a more discretionary punishment may be substituted for the same;" be it therefore enacted, that so much of the said three lastly herein-before in part recited acts, as relates to the punishment of persons convicted of offences for which they are liable under the said act of the second Punishment enacted by 2 & 3 W. 4, c. 123; 3 & 4 W. 4, c. 51, s. 27; and 3 & 4 W. 4, c. 44, mitigated.

(a) Entitled "*An act to provide more effectual means to make treasurers of counties, and counties of cities in Ireland, account for public monies, and to secure the same.*"

(b) Entitled "*An act to abolish the punishment of death in cases of forgery.*" It came into operation on the 1st of October, 1837—s. 5.

7 Wm. 4, & 1 and third years, or the said act of the third and fourth years respectively of his late majesty's reign, to be transported for life, shall, from and after the commencement of this act, be, and the same is hereby repealed; and that from and after the passing of this act, every person convicted of any of such offences, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such person, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, nor less than two years.

Persons convicted of offences punishable by imprisonment may be kept to hard labour and to solitary confinement.

3. That when any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

Repeal of certain provisions of recited acts.

CAP. 85 (a), s. 1. Whereas it is expedient to amend [9 Geo. 4, c. 31, *Eng.*, and 10 Geo. 4, c. 34, *Ir. ss.* 14, 15, & 16, (*Hayes, C. P.* 84—87)] and so much of the same acts as relates to the punishment of accessories after the fact to such of the felonies punishable under those acts as are herein-before referred to:] Be it therefore &c., that so much of the said acts as is herein-before referred to shall continue in force until and throughout the 30th day of September, 1837, and shall from and after that day be repealed, except as to offences committed before or upon the said 30th day of September, which shall be dealt with and punished as if this act had not been passed.

Administering poison, or injuring with intent to murder; felony, death.

2. That whosoever shall administer to, or cause to be taken by any person, any poison or other destructive thing, or shall stab, cut, or wound any person, or shall, by any means whatsoever, cause to any person any bodily injury dangerous to life, with intent in any of the cases aforesaid to commit murder, shall be guilty of felony, and being convicted thereof, shall suffer death.

Attempting to murder, though no bodily injury effected; felony.

3. That whosoever shall attempt to administer to any person, any poison or other destructive thing, or shall shoot at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent, in any of the cases aforesaid, to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported be-

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(a) Entitled "*An act to amend the laws relating to offences against the person.*" It commenced on 1st of October, 1837.—s. 13.

and the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. 7 Will. 4, & 1 Vict. c. 85.

4. That whosoever unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall stab, cut, or wound any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. Attempting to maim, &c. felony.

5. That whosoever shall unlawfully and maliciously send or deliver to, or cause to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon, or otherwise apply to any person, any corrosive fluid or other destructive matter, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby in any of the cases aforesaid any person shall be burnt, maimed, disfigured, or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. Sending explosivesubstances, or throwing destructive matter, with intent to do bodily harm; felony.

6. That whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever, with the like intent, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. Trying to procure abortion; felony.

7. That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years. Punishment of accessories.

8. That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol, or house of correction, and also to

7 WIL. 4, & 1  
VICT. c. 85.

direct that the offender shall be kept in solitary confinement, for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court, in its discretion, shall seem meet.

Admiralty  
jurisdiction.

10. That where any felony punishable under this act shall be committed within the jurisdiction of the admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction.

Verdict of  
assault, upon  
indictment  
for felony.

11. That on the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found, the court shall have power to imprison the person so found guilty of an assault, for any term not exceeding three years.

CAP. 86 (a), s. 1. [Whereas, it is expedient to amend so much of an act passed in [7 & 8 Geo. 4, Eng. c. 29, and 9 Geo. 4, Ir. c. 55. (*Hayes, Cr. and Pun.* 34 a.)] as relates to the punishment of any person convicted of burglary; and so much of the same acts as relates to any person who shall steal any chattel, money, or valuable security, to any value whatever, in any dwelling house, any person therein being put in fear; and so much of the same acts as relates to the punishment of principals in the second degree, and of accessories before and after the fact respectively to such of the felonies punishable under those acts, as are herein-before referred to: Be it therefore &c., that so much of the said acts as is herein-before referred to shall continue in force until and throughout the 30th day of September, 1837, and shall from and after that day be repealed, except as to offences committed before or upon the said 30th day of September, which shall be dealt with and punished as if this act had not been passed.

Recited acts  
in part re-  
pealed.

Burglars us-  
ing violence;  
felony, death.

2. That whosoever shall burglariously break and enter into any dwelling house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat, or strike any such person, shall be guilty of felony, and being convicted thereof, shall suffer death.

Punishment  
of burglary.

3. That whosoever shall be convicted of the crime of burglary, shall be liable, at the discretion of the court, to be transported beyond the seas, for the term of the natural life of such offender, or for any term not less than ten years, or to be imprisoned for any term not exceeding three years.

(a) Entitled "An act to amend the laws relating to burglary and stealing in a dwelling house." It came into operation on the 1st of October, 1837.  
—s. 12.

4. Provided always, and be it enacted, that, so far as the same is essential to the offence of burglary, the night shall be considered, and is hereby declared to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day.

7 Will. 4 & 1  
Vict. c. 86.

Burglary,  
when com-  
missible.

5. That whosoever shall steal any property in any dwelling house, and shall, by any menace or threat, put any one being therein in bodily fear, shall be guilty of felony, and being convicted thereof, shall be liable to be transported beyond the seas, for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years.

Stealing in a  
dwelling  
house with  
menace &c.;  
felony.

6. That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act (except only a receiver of stolen property) shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

Punishment  
of accessories.

7. That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

Offences pu-  
nishable by  
imprison-  
ment.

9. That the word "property" shall, throughout this act be deemed to denote every thing included under the words, "chattel, money, or valuable security," used in the said acts of the seventh and eighth years and ninth year respectively of King George the Fourth.

Construction  
of the word  
"property."

10. That where any felony punishable under this act shall be committed within the jurisdiction of the admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction.

Admiralty  
Jurisdiction.

CAP. 87 (a), s. 1 [*Recites the expediency of amending the 7 & 8 Geo. 4, Eng. c. 29, and 9 Geo. 4, c. 55, Ir. ss. 6, 7, 18,*] and so much of the same acts as relates to the punishment of principals in the second degree and of accessories before and after the fact respectively to such of the felonies punishable under those acts as are herein-before referred to: Be it therefore &c., that so much of the said acts as is herein-before referred to

Repeal of  
provisions in  
recited acts.

(a) Entitled "*An act to amend the laws relating to robbery and stealing from the person.*" It came into operation on the 1st of October, 1837.—s. 15.



**7 Will. 4, & 1 Vict. c. 87.** shall continue in force until and throughout the 30th day of September, 1837, and shall from and after that day be repealed, except as to offences committed before or upon the said 30th day of September, which shall be dealt with and punished as if this act had not been passed.

**Robbery,  
with cutting,  
&c.; felony,  
death.**

2. That whosoever shall rob any person, and at the time of or immediately before or immediately after such robbery shall stab, cut, or wound any person, shall be guilty of felony, and being convicted thereof shall suffer death.

**Robbery  
attended with  
violence;  
felony.**

3. That whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with intent to rob any person, or shall, together with one or more person or persons, rob or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

**Obtaining  
property by  
threat of ac-  
cusing of un-  
natural  
crime;  
felony.**

4. That whosoever shall accuse, or threaten to accuse any person of the abominable crime of buggery, committed either with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise, or threat to any person, whereby to move or induce such person to commit or permit the said abominable crime, with a view or intent, in any of the cases aforesaid, to extort or gain from such person, and shall, by intimidating such person by such accusation or threat, extort or gain from such person, any property, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

**Robbery  
or stealing  
from the per-  
son.**

5. That whosoever shall rob any person, or shall steal any property from the person of another, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years.

**Assault  
with intent to  
rob; felony.**

6. That whosoever shall assault any person with intent to rob, shall be guilty of felony, and being convicted thereof, shall, (save and except in the cases where a greater punishment is provided by this act,) be liable to be imprisoned for any term not exceeding three years.

**Demanding  
property by  
menace;  
felony.**

7. That whosoever shall, with menaces or by force, demand any property of any person, with intent to steal the same, shall be guilty of felony, and being convicted thereof, shall

be liable to be imprisoned for any term not exceeding three years. 7 Will. 4, & 1 Vict. c. 87.

8. That whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, and be convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas, for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years. Punishment for wrecking.

9. That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act (except only a receiver of stolen property) shall, on conviction, be liable to be imprisoned for any term not exceeding two years. Punishment of accessories.

10. That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement, for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court, in its discretion, shall seem meet. Offences punishable by imprisonment.

12. That the word "property" shall throughout this act be deemed to denote every thing included under the words "chattel, money, or valuable security," used in the said acts of the seventh and eighth years and ninth year respectively of King George the Fourth. Construction of the word "property."

13. That where any felony punishable under this act, shall be committed within the jurisdiction of the admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction. Admiralty jurisdiction.

CAP. 88 (a), s. 1. Whereas it is expedient to amend so much of an act passed in [28 Hen. 8, Eng. c. 15; 11 & 12 Will. 3, Eng. c. 7; 4 Geo. 1, Eng. c. 11; 8 Geo. 1, Eng. c. 24; and 18 Geo. 2, Eng. c. 30,] as relates to the punishment of the crime of piracy, or of any offence by any of the said acts declared to be piracy, or of accessories thereto respectively: be it therefore &c., that so much of the said several acts as is herein-before referred to, shall, from and after the Repeal of provisions in recited acts.

(a) Entitled "*An act to amend certain acts relating to the crime of piracy.*"  
It came into operation on the 1st of October, 1837—s. 7.

7 Will. 4, & 1 Vict. c. 88. commencement of this act, be and the same is hereby repealed.

Piracy with attempt to murder; felony, death.

Punishment of piracy.

2. That from and after the commencement of this act, whosoever, with intent to commit, or at the time of or immediately before or immediately after committing, the crime of piracy in respect of any ship or vessel, shall assault, with intent to murder, any person being on board of or belonging to such ship or vessel, or shall stab, cut, or wound any such person, or unlawfully do any act by which the life of such person may be endangered, shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

3. That from and after the commencement of this act, whosoever shall be convicted of any offence which, by any of the acts herein-before referred to, amounts to the crime of piracy, and is thereby made punishable with death (a), shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

(a) The offences above alluded to, are detailed in the following clauses of English statutes:—

Committing piracy against a fellow subject, under color of foreign commission; piracy.

11 & 12 Will. 3, c. 7, s. 8. That if any of his Majesty's natural born subjects or denizens of this kingdom shall commit any piracy or robbery or any act of hostility against others his Majesty's subjects upon the sea, under color of any commission from any foreign prince or state, or pretence of authority from any person whatsoever, such offender and offenders and every of them shall be deemed, adjudged, and taken to be pirates, felons, and robbers, and they and every of them, being duly convicted thereof, according to this act, or the aforesaid statute of [28 H. 8, c. 15 Eng.; 11, 12, and 13, Jac. 1, c. 2. *Ir. Hayes, C. P.* 18] shall have and suffer such pains of death, loss of lands, goods and chattels, as pirates, felons, and robbers upon the sea ought to have and suffer.

Running away with his ship, yielding it to pirates, confining the master, mutinying, &c.; piracy.

9. That if any commander or master of any ship, or any seaman or mariner, shall in any place where the admiral hath jurisdiction, betray his trust and turn pirate, enemy or rebel, and piratically and feloniously run away with his or their ship or ships; or any barge, boat, ordnance, ammunition, goods or merchandises, or yield them up voluntarily to any pirate, or shall bring any seducing messages from any pirate, enemy, or rebel, or consult, combine or confederate with, or attempt or endeavour to corrupt any commander, master, officer or mariner to yield up, or run away with any ship, goods, or merchandises, or turn pirate, or go over to pirates; or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods committed to his trust, or that shall confine his master, or make, or endeavour to make a revolt in the ship, shall be adjudged, deemed, and taken to be a pirate, felon, and robber, and being convicted thereof according to the directions of this act, shall have and suffer pains of death, loss of lands, goods and chattels, as pirates, felons and robbers upon the seas ought to have and suffer.

Clergy excluded.

4 Geo. 1, c. 11, s. 7. That all and every person and persons who have committed or shall commit any offence or offences, for which they ought to be adjudged, deemed and taken to be pirates, felons or robbers by [11 & 12

4. That in the case of every felony punishable under this act, every principal in the second degree and every accessory before the fact shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

7 Will. 4, & 1  
Vict. c. 88.

Punishment  
of accessories.

5. That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

Offences pun-  
ishable by im-  
prisonment.

CAP. 89 (a), s. 1, [*Recites that it is expedient to amend the 7 & 8 Geo. 4, c. 30, Eng. and the 9 Geo. 4, c. 56, Ir. ss. 2, 6, 9, 11, and so much of s. 18*] as relates to any person who shall unlawfully or maliciously set fire to any stack of corn,

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*Will. 3, Eng. c. 7.] \* \* \* \* shall and ought to be utterly debarred and excluded from the benefit of clergy for the said offences; any law or statute to the contrary thereof in any wise notwithstanding.*

8 Geo. 1, c. 24, s. 1. That if any commander or master of any ship or vessel, or any other person or persons, shall from and after the 25th day of March, 1722, any wise trade with any pirate, by truck, barter, exchange or in any other manner, or shall furnish any pirate, felon or robber upon the seas, with any ammunition, provision or stores of any kind, or shall fit out any ship or vessel knowingly and with a design to trade with, or supply, or correspond with any pirate, felon, or robber on the seas, or if any person or person, shall any ways consult, combine, confederate or correspond with any pirate, felon or robber on the seas, knowing him to be guilty of any such piracy, felony or robbery, such offender and offenders, and every of them, shall in each and every of the said cases be deemed, adjudged and taken to be guilty of piracy, felony and robbery; \* \* \* and he and they being convicted of all or any the matters aforesaid, shall suffer such pains of death, loss of lands, goods and chattels, as pirates, felons and robbers upon the seas ought to suffer; and in case any person or persons belonging to any ship or vessel whatsoever, upon meeting any merchant ship or vessel on the high seas, or in any port, haven or creek whatsoever, shall forcibly board or enter into such ship or vessel, and though they do not seize and carry off such ship or vessel, shall throw overboard or destroy any part of the goods or merchandises belonging to such ship or vessel, the person or persons who shall be guilty thereof, shall in all respects be deemed and punished as pirates as aforesaid.

Trading or  
correspond-  
ing with  
pirates,

or forcibly  
boarding any  
vessel, and  
destroying  
goods therein;  
piracy.

4. That all and every offender or offenders convicted of any piracy, felony or robbery by virtue of this act, shall not be admitted to have the benefit of clergy, but be utterly excluded of and from the same.

Clergy ex-  
cluded.

(a) Entitled "*An act to amend the laws relating to burning or destroying buildings and ships.*" It took effect on the first of October, 1837—s. 16.

7 Will. 4, & 1 grain, pulse, straw, hay, coals, turf, charcoal, or wood; and  
 Vict. c. 89. so much of the same acts as relates to the punishment of  
 principals in the second degree, and of accessories before and  
 after the fact respectively to such of the felonies punishable  
 under those acts as are hereinbefore referred to; Be it there-  
 fore &c., that so much of the said acts as is herein-before  
 referred to, shall continue in force until and throughout the  
 thirtieth day of September, 1837, and shall from and  
 after that day be repealed, except as to offences committed  
 before or upon the said thirtieth day of September, which  
 shall be dealt with and punished as if this act had not been  
 passed.

Repeal of  
 provisions in  
 recited acts.

Setting fire to  
 a dwelling  
 house, any  
 person being  
 therein;  
 felony, death.

Setting fire  
 to a church,  
 or chapel,  
 house, ware-  
 house, &c.;  
 felony.

Setting fire,  
 &c. to ships  
 with intent to  
 murder; fe-  
 lony, death

Hanging out  
 false lights  
 to cause  
 shipwreck;  
 felony, death.

Setting fire, -  
 &c. to a ship  
 with intent to  
 destroy it;  
 felony.

2. That whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of felony, and being convicted thereof shall suffer death.

3. That whosoever shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland; or shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malthouse, hopoast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

4. That whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof, shall suffer death.

5. That whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof, shall suffer death.

6. That whosoever shall unlawfully and maliciously set fire to or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall

underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. 7 Will. 4, & 1 Vict. c. 89.

7. That whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, (whether he shall be on board or shall have quitted the same,) shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. Impeding any person endeavouring to save his life from ship-wreck, &c.; felony.

8. That whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years. Destroying wrecks or articles belonging thereto; felony.

9. That whosoever shall unlawfully and maliciously set fire to any mine of coal or cannel coal shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. Setting fire to coal mines; felony.

10. That whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, or wood, or any steer of wood, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. Setting fire to agricultural produce, &c.; felony.

11. That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years. Punishment of accessories.

12. That where any person shall be convicted of any of- Offences

7 Will. 4, & 1  
Vict. c. 89.

punishable by  
imprison-  
ment.

Admiralty  
jurisdiction.

Repeal of  
certain pro-  
visions of re-  
cited acts, and  
new provision  
in lieu there-  
of.

Offences  
punishable by  
imprison-  
ment.

fence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

14. That where any felony punishable under this act shall be committed within the jurisdiction of the admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction.

CAP. 90 (a), s. 1. [*Recites 2 & 3 Will. 4. c. 62, (Hayes C. & P. 4) and 4 Will. 4, c. 44, ss. 1, 2, 3. (H. C. P. 35 a.)*] And whereas it is expedient to alter and amend the said recited acts; Be it therefore &c., that so much of the said recited acts as relates to the punishment of persons convicted of offences for which they are liable, under the said act of the second and third years of his said late majesty's reign, to be transported for life; and so much of the said act of the fourth year of the said reign as relates to the punishment of any person convicted of the offence of breaking and entering any dwelling house, and stealing therein as in that act mentioned, shall, from and after the commencement of this act, be and the same is hereby repealed; and that from and after the commencement of this act, every person convicted of any of such offences, shall be liable to be transported beyond the seas for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years.

3. That in awarding the punishment of imprisonment for any offence punishable under this act, it shall be lawful for the court to direct such imprisonment to be with or without hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

5. And whereas, by the laws now in force, it is lawful for the court, before whom any person shall be convicted of certain offences for which imprisonment or imprisonment with hard labour may be awarded, to direct that the offender shall be kept in solitary confinement for the whole or any

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(a) Entitled "*An act to amend the law relative to offences punishable by transportation for life.*" It came into operation on the 1st of October, 1837.—s. 6.

portion or portions of such imprisonment or of such imprisonment with hard labour, as to such court in its discretion should seem meet; it is hereby enacted, that from and after the commencement of this act, it shall not be lawful for any court to direct that any offender shall be kept in solitary confinement for any longer periods than one month at a time, or than three months in the space of one year.

7 Will. 4, & 1 Vict. c. 90.

Limitation of time of solitary confinement.

CAP. 91 (a), s. 1.—*Recites the 1 Geo. 1, c. 5 Eng., to which the 27 Geo. 3, c. 15, ss. 1 (H. C. P. 142 b) & 3. (H. C. P. 143) nearly correspond; also the 25 Geo. 2, c. 37 Eng., and the corresponding act of the 31 Geo. 3, c. 17, s. 10 Ir. (H. C. P. 338); also the 37 Geo. 3, c. 70 Eng., and the corresponding Irish act, 37 Geo. 3, c. 40, s. 1, (H. C. P. 134); also the 52 Geo. 3, c. 104; 59 Geo. 3, c. 136; 5 Geo. 4, c. 113; 3 & 4 Will. 4, c. 53, ss. 58 & 59, (H. C. P. 217).]*—

And whereas it is expedient that none of the herein-before mentioned offences should henceforth be punishable with death. Be it therefore &c., that if any person shall, after the commencement of this act, be convicted of any of the offences herein-before mentioned, such person shall not suffer death, or have sentence of death awarded against him or her for the same, but shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such person, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

Punishment of death in certain cases abolished.


2. That in awarding the punishment of imprisonment for any offence punishable under this act, it shall be lawful for the court to direct such imprisonment to be with or without hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

Offences punishable by imprisonment.

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(b) Entitled, "*An act for abolishing the punishment of death in certain cases.*" Its operation commenced on the first of October, 1837—s. 5.



 *The reader will have the goodness to make references and corrections in the principal work, according to the following observations.*

**Page**

4. In the 9 *Geo. 4*, c. 55, s. 25, strike out all that follows the words "*shall suffer death as a felon*," the same having been held to have been repealed by the 3 & 4 *Will. 4*, c. 62, s. 1, *R. v. Reid*, 5 *Law Rec.* 97, per *Joy*, C. B.
- To the 2 & 3 *Will. 4*, c. 62, s. 1, annex a marginal reference to the 7 *Will. 4*, & 1 *Vict.* c. 90, s. 1, *Supp.* 21, by which the punishment is altered.
- 3 & 4 *Will. 4*, c. 44, s. 3. Strike out the words "and all persons punishable by transportation for life, under an act passed, &c. [2 & 3 *Will. 4*, c. 123]" so much of the clause having been repealed by the 7 *Will. 4*, & 1 *Vict.* c. 84, s. 2, (*Supp.* 11.)
16. Sections 6 & 7 of the 9 *Geo. 4*, c. 55, have been repealed by the 7 *Will. 4*, & 1 *Vict.*, c. 87, (*Supp.* 15,) which also enacts other provisions in lieu thereof.
19. The third section of the 11, 12 & 13 *Jac. 1*, c. 2, has been repealed by the 7 *Will. 4*, & 1 *Vict.* c. 88, (*Supp.* 17,) which makes great alterations in the law of Ireland as to piracy.
20. The 9 *Geo. 4*, c. 55, s. 18, has been repealed by the 1st sec. of the 7 *Will. 4* & 1 *Vict.*, c. 87, (*Supp.* 15,) and another provision enacted by the 8th section (*Supp.* 17.)
22. Sections 9 & 11 of the 9 *Geo. 4*, c. 56, have been repealed by the 7 *Will. 4*, & 1 *Vict.*, c. 89, s. 1, (*Supp.* 19,) and other provisions reenacted by sections 4—8, of the same act, (*Supp.* 20.)
30. Opposite the 6 & 7 *Will. 4*, c. 14, append a reference to the 7 *Will. 4*, & 1 *Vict.*, c. 48. (*Supp.* 10.)
- 34 a. Strike out the 9 *Geo. 4*, c. 55, s. 11. It has been repealed by the 7 *Will. 4*, & 1 *Vict.*, c. 86, and other provisions substituted, (*Supp.* 14.)
- 9 *Geo. 4*, c. 55, s. 12. The whole of this section is now repealed; the last remaining part, as to stealing in a dwelling-house, any person therein being put in fear, having been repealed by the 7 *Will. 4*, & 1 *Vict.*, c. 86, (*Supp.* 14.)
- 35 a. The punishment of transportation for life affixed to the offences mentioned in the 2 & 3 *Will. 4*, c. 62, has been mitigated by the 7 *Will. 4*, & 1 *Vict.*, c. 90, s. 1, (*Supp.* 22.)
- 3 & 4 *Will. 4*, c. 44, s. 2. This clause has been repealed, and a new punishment annexed, by the 7 *Will. 4*, & 1 *Vict.*, c. 90, s. 1, (*Supp.* 22.)

36. Sections 2 and 6 of the 9 *Geo.* 4, c. 56, have been repealed by the 7 *Will.* 4, & 1 *Vict.*, c. 89, (*Supp.* 19.)
41. So much of the 9 *Geo.* 4, c. 56, s. 18, as relates to the setting fire to any stack of corn, grain, pulse, straw, hay, coals, turf, charcoal or wood, has been repealed by the 7 *Will.* 4, & 1 *Vict.*, c. 89, (*Supp.* 19.)
79. The punishment of transportation for life, affixed to the offences referred to in the 2 & 3 *Will.* 4, c. 123, has been mitigated by the 7 *Will.* 4, & 1 *Vict.*, c. 84, (*Supp.* 11.)
80. The 3 & 4 *Will.* 4, c. 44, s. 3, as set out, may be cancelled, having been repealed by the 7 *Will.* 4, & 1 *Vict.*, c. 84, s. 2, (*Supp.* 11.)
- 84–87. The act 10 *Geo.* 4, c. 34, ss. 14, 15, & 16, has been repealed, and new provisions substituted by the 7 *Will.* 4, & 1 *Vict.*, c. 85, (*Supp.* 12.)
87. Opposite the 10 *Geo.* 4, c. 34, s. 17, add a reference to the 7 *Will.* 4, & 1 *Vict.*, c. 44, (*Supp.* 9.)
135. The punishment attached to the offences mentioned in the 37 *Geo.* 3, c. 40, s. 1, has been altered by the 7 *Will.* 4, & 1 *Vict.*, c. 91, (*Supp.* 23.)
- 142 b. See the 7 *Will.* 4, & 1 *Vict.*, c. 91, s. 1, which recites the 1 *Geo.* 1, c. 5, *Eng.* ss. 1 & 5, to which the 27 *Geo.* 3, c. 15, ss. 1 & 3, correspond; and repeals the punishment of death therein mentioned. (*Supp.* 23.)
149. At the end of "SECTION 1," add a reference to 7 *Will.* 4, & 1 *Vict.*, c. 48, s. 12. (*Supp.* 10.)
- 159–162. Sections 8–13 & 18, all seem to have been virtually repealed by the 6 & 7 *Will.* 4, c. 116; and may therefore, be cancelled.
215. The punishment prescribed by the 3 & 4 *Will.* 4, c. 51, s. 27, for the offences therein mentioned, has been altered by the 7 *Will.* 4, & 1 *Vict.*, c. 84, ss. 2 & 3, (*Supp.* 11.)
217. The punishment of death, mentioned in the 3 & 4 *Will.* 4, c. 53, s. 58, has been mitigated by the 7 *Will.* 4, & 1 *Vict.*, c. 91, (*Supp.* 23.)
218. A similar observation applies to the 59th section of the same statute, (*Supp.* 23.)
- 246–256. Cancel the whole of "SECTION 5," all the statutes mentioned in it having been repealed by the 7 *Will.* 4, & 1 *Vict.* c. 32, and other provisions re-enacted by c. 36, (*Supp.* 2.)
338. 31 *Geo.* 3, c. 17, s. 10. The penalty of death mentioned in this section has been mitigated by the 7 *Will.* 4, & 1 *Vict.*, c. 91, (*Supp.* 23.)
344. So much of the 28 *Eliz.* c. 1, ss. 1 & 2, as inflicts the punishment of pillory, has been repealed by the 7 *Will.* 4, & 1 *Vict.*, c. 23. (*Supp.* 1.)
349. To note (b), add a reference to 7 *Will.* 4, & 1 *Vict.*, c. 54, s. 3, (*Supp.* 11.)

354. At the end of "SECTION 4," add a reference to 7 *Will.* 4, & 1 *Vict.* c. 48. s. 11, (*Supp.* 10.)
438. 6 & 7 *Will.* 4, c. 29, s. 1. The police district of Dublin Metropolis, as constituted by the 48 *Geo.* 3, c. 140, has been altered by the 7 *Will.* 4, & 1 *Vict.*, c. 25. (*Supp.* 1,) to which reference should be made.
571. In the margin, opposite the 3 & 4 *Will.* 4, c. 91, s. 2, add a reference to the 7 *Will.* 4, & 1 *Vict.*, c. 25, s. 20, (*Supp.* 2.)
628. The provisions of the 9 *Geo.* 4, c. 54. s. 19, have been to some extent altered by the 7 *Will.* 4, & 1 *Vict.*, c. 90, s. 5, (*Supp.* 22.)
631. Line 4 from bottom, add a reference to the act, 7 *Will.* 4, & 1 *Vict.*, c. 85, s. 11, (*Supp.* 14.)
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